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THE OLD YELLOW BOOK

SOURCE OF BROWNING'S

THE RING AND THE BOOK

IN COMPLETE PHOTO-REPRODUCTION

WITH

TRANSLATION, ESSAY, AND NOTES

BY

CHARLES W. HODELL

SECOND EDITION

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GENERAL PREFACE.

The present volume has grown from an interest in *The Ring and the Book*, originating years ago in the instruction of Professor Hiram Corson. Under his direction I undertook a more intensive study of the spiritual significance of the poem, and embodied the result in my thesis for the doctorate, printed in 1894. The throbbing reality of the Franceschini tragedy in the poem raised persistent questioning. How far was it historical fact, how far the imagination of the poet? What were the contents of the book, so vividly described by the poet? Fleeting glimpses of the volume in two subsequent visits to England only served to strengthen my purpose to know Browning's Book in detail. Later on, by the courtesy of Balliol College, I was accorded the privilege of free access to the poet's treasure-trove. The significance of the mastery of Robert Browning and the vital humanity of his great work have grown upon me with each year of this study. I trust that this volume may have something of the same effect upon others, and I feel that it is an important document in any future elaboration of the theory of creative genius in literature.

When it became apparent that the work, if published with due completeness, must be issued by a subsidized press, I turned to the Carnegie Institution of Washington. The generous interest of its officers has enabled me to plan and execute the work without abridgment, and I am indebted to them for unceasing courtesies and assistance in bringing the book to its present issue.

As the book might be approached from various points of view, my purpose in publishing should be definitely stated. It is not to present a study of medieval criminal jurisprudence, though I have reason to believe that the book contains much to repay a student in this field; I have accordingly left without explanation all matters of this nature. Nor is the purpose to elucidate the fact of the Franceschini murder as a matter of

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history; for the crime, as history, is of little value, and evidence in the case is but fragmentary. Stricter search of the archives in Arezzo and Rome than Browning could make might reveal further facts, but could not forward the purpose of the present volume. Nor is the purpose linguistic—to study the crabbed Latinity and the colloquial Italian of the volume. I have therefore felt that no glossary was needed, and have omitted etymological and philological annotation. Nor is the purpose to make a literary study of *The Ring and the Book*. Much that is most interesting and most vital in the poem has necessarily been excluded. Still further, although this volume is a source-study it does not present a theory of sources or a study of the more general aspects of the play of creative mind upon raw material. Certain *obiter dicta* of this kind have found natural place in the essay, but I have felt that there was no place for a full discussion of the general theory of sources.

But the present work has been designed primarily to place side by side the crude raw material of the Old Yellow Book and the completed art-product, *The Ring and the Book*, in illustration of the play of the creative mind of Robert Browning in this stupendous work of imagination—one of the most potent and masterful creative undertakings in English poetry since Shakespeare. Whatever makes clearer Browning's use of his material has had a place in the editing of the volume. All else is purely subsidiary, if not extraneous. The final outcome, it is hoped, will be to set in a truer light the mastership of Browning.

The plan of the volume has grown deliberately from the material before the editor, in his endeavor to present fully this extensive poem side by side with its equally extensive source-book, and yet to keep the volume as lucid and as easily usable as possible.

Of first importance is the reproduction of the Book itself, to secure the scholarly world against the possible destruction of the unique copy in the library of Balliol College. Photo-reproduction was determined upon as most accurate and most interesting, even though it displayed the numerous typographical faults of the original. Certain defects due to creases

in the pages of the Book had to be cut in by hand; these are in no case conjectural emendations, but are corrections of a mechanical fault in the old pages. The old ink leaf-numberings in the upper right-hand corner have been clipped in photographing and are supplanted by the more convenient page-numberings in Roman at the bottom of the page.

A full translation is then included as a matter of convenience, and its principles are more fully set forth in a separate translator's preface.

After these two, follows an essay for the general reader and student, who wishes the whole study gathered together in readable form. It is the chief portion of the Book for many a reader of the poem and is therefore made the fuller in its scope. On the other hand, the writer has tried to restrict himself to his own limited aspect of the work in hand, barring himself from many an inviting line of thought concerning other phases of the masterpiece.

The question of annotation was one of the most important in the volume, because of the intricacy and extensiveness of the cross-referencing from such a poem to such a book; for any given fact may be repeated a score of times in book and poem. It therefore seemed best to gather all the annotations in a corpus of topical notes and to refer thereto by superior figures. To the casual reader the annotation may at points seem trivial, but the important truth of the study often finds best illustration in a multitude of such petty details. The subdivision of a larger subject among many notes has often been necessitated by the plan of cross-referencing; and the disadvantages therein are overcome by arranging the notes in groups, so that all annotations on the same or kindred subjects will fall together as far as possible. The use of these notes has been facilitated by the line and subject indexes subjoined.

In the course of so protracted a study, I must acknowledge many a helping hand. To my master, Professor Hiram Corson of the Cornell University, I owe not merely my original interest in the poem, but many years of subsequent counsel and support. The officers of Balliol College have never stinted their endeavor to assist me in making my work as complete as

possible. Professors Joseph S. Shefloe, Hans Froelicher, and William H. Hopkins of my own institution, Professor Eustace Shaw of Johns Hopkins University, and Professor Edwin Post of DePauw University have afforded me invaluable counsel in my labor of translation. The officers of the Peabody Library of Baltimore have aided me at every point with the treasures of that institution. I must also acknowledge the personal interest and encouragement of President D. C. Gilman and Professor J. W. Bright.

CHARLES W. HODELL.

The Woman's College of Baltimore,
March 20, 1908.

EDITOR'S NOTE CONCERNING THE SECOND EDITION.

The first edition of the Old Yellow Book has been exhausted. In preparing a second edition the original plates have been used with only a few modifications. After full consideration it has seemed inexpedient to extend the annotations. Some typographical errors which appeared in the first edition have been corrected; and on page 346 there has been added a list of such personal names occurring in the book and pamphlet as Browning used in his poem, together with a record of the order of events of the case.

CHARLES W. HODELL.

Baltimore, December 11, 1915.

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DESCRIPTION OF PLATES

Portrait of Robert Browning, now hanging in Balliol Commons, Oxford. Painted by R. Barrett Browning in 1883. The Poet holds the Old Yellow Book in his hand, and is clad in his robes as honorary fellow.[536]

Franceschini coat of arms.[47] A rude water-color sent to the Poet by Barone Kirkup and pasted on the front inside cover of the Old Yellow Book.

Portrait of Guido Franceschini. A pen-sketch made on a loose sheet shortly before the execution of the Murderer. Bought among a bundle of miscellaneous papers in London, and sent by the finder to the Poet.[45]

The Death Record of Pompilia in the register of San Lorenzo in Lucina.[24]

The Old Yellow Book.

Do you see this square old yellow Book, I toss
I' the air, and catch again, and twirl about
By the crumpled vellum covers,—pure crude fact
Secreted from man's life when hearts beat hard,
And brains, high-blooded, ticked two centuries since?
* * *
Small-quarto size, part print part manuscript:
A book in shape but, really, pure crude fact
* * *
Give it me back! The thing's restorative
I' the touch and sight.
* * *
Here is it all i' the book at last, as first
There it was all i' the heads and hearts of Rome
* * *
truth thus grasped and gained,—
The book was shut and done with and laid by

The unique collection of pamphlets, which Browning called the "old yellow book," now rests in Balliol College Library, Oxford. This first reproduction of it has been made by the Columbia Planograph Company of Washington from photographic plates taken by the Clarendon Press, Oxford.

Arme Franceschini
Famiglia Aretina

Da un MS Priorista
Aretino esistente presso
la famiglia Albergotti

Arezzo Luglio 1868

Robert Browning.

ἐμοὶ μὲν ὧν Μοῦσα κεχαρισμένως
τὸν βέλος ἀλκᾷ τρέφει.

Posizione
Di tutta La Causa Criminale
Contro
Guido Franceschini Nobile
Aretino, e suoi Sicarij Stati
fatti morire in Roma il di 22.
Febb.io 1698.
Il primo con la decollazione d'altri
quattro di Forca
Romana Homicidiorum

Disputatur an et quando Maritus
possit occidere Vxorem
Adulteram
absque incursu pœnæ Ord.ris

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Sentenza della Ruota Criminale di Firenze nella Causa Criminale Contro Gregorio Guillichini, Fran.co Pompilia Comparini moglie di Guido Franceschini, e seguita di 28 Xbre 169[illegible] — —

Consulto a Difesa di d.o Franceschini di S.r Giacinto Arcangeli Prore de Roveris in Roma fatto d'avanti La Cong.ne di Monsig.r Governatore —

Consulto di S.r Avv.to Desiderio Spreti Avv.to De Roveris a Difesa di Sud.o Franceschini, e Socij —

Consulto del Sud.o S.r Arcangeli a Difesa di Biagio Agostinelli, e Compagni di Delitto — —

Sommario degl'atti fatto a parte di Fisco —

Consulto di S.r Fran.co Zambi di Fisco, e della Reu.da Camera Apostolica Procur.r Contro il Sud.o Franceschini, e Socij di Delitto —

Consulto di S.r Gio: Batta Bonini Avv.to del Fisco, e della Reu.da C. A. Contro i Sud.i —

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i Suddi Francheschini e Socij — — — —
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Aud.e del Fisco — — — — — — —
Altro Consulto del Suddo Contro del Rej —
Risposta alle Suddo notizie di fatto d'Au=
tore Anonimo — — — — — —
Sentenza del Sig.r Mari Ant.o Venturini Luogot.e
in Criminale, che dichiara non Constare del
Adulterio, e restituisce alla pristina fama
La Memoria della Fran.a Pompilia Comparini
moglie di Quido Francheschini — — — —
Consulto del S.r Ant.o Zamparelli Orord della
Carità in d.a Causa — — — — —
Lettera scritta dal S.r D. Giacinto Arcangeli Pro=
curat.e de Conti a My Fran Cencini in Firen.e
nella quale l'avvisa esser stata eseguita la
Sentenza di Morte in Roma contro i Rej il dì 22.
Febb.o 1698. cioè il Franceschini decapitato, e gl'altri
quattro rei Impiccati — — — — —
Altre due Lettere, che una scritta dal S.r Cavaliere del
Torto, altra dal S.r Carlo Ant.o Vgolinucci all'istes.o
My Fran Cencini — — — — — —
Consulto del D. Aud.e Spretti a favor di Franche=
schini — — — — — —

Adi 15. Febb.o 1692. ab Inc.(to)

Fede, m.e Infrascritto come nella Città de negozij de Libri, et Scritti spettanti ad A. S.r esistente in Sant.a Sig.a degl' Ill.mi SS.ri Auditori della Ruota Criminale della Città di Firenze infra gl'altri negozij ui appartenenti sotto nro 3549. il seguente di tenore infrascritto cioè

Arezzo Contro

1. Gregorio di Fran.co Guillichini non descritto
2. Francesca Lompilia Comparini moglie di Guido Franceschini, e
3. Francesco di Gio: Borsi d.o Venerino Sarzone d'Agost.o Costa al Canale per se d.a 2.a Ing.ta contro l'onore desse de Matrimoniale ispendosi dato ingresso a disonesti Amori con il Can.co Giuseppe Caponsacchi, e com.o Ing.to il che Scoprendo come si può Credere da gar-zoni della Città d'Arezzo la Sera de 20. Xbre 1692. ne seguitò il Concertato, et non spero sieno stati imputati, 2.a Ing.ta disse a Cena nel Vino al di lei Marito il Sonnifero in Caffè, e alle 7. ore di notte in c.a All'istessa Sera del Canonico Caponsacchi, e Com.o Ing.to Conducessero Via dalla Casa di proc.o Marito la pred.a 2.a Ing.ta e spero la Porta della Città serrata sicuramente, e Condotta in l.o d.o il Cavallo fuori della Porta S. Clemente doue quini d.a 3.a con il Calesse a due Cavalli stava attendendo la Loro Venuta entrasse in d.o Calesse il d.o Can.co Caponsacchi, e d.a 2.a Ing.ta S.r incaminassero alla

volta di Perugia conducendoli D. 3: in Calesso fino
a Camoscia e Munere, e strada viaggiarono a Lisca
di Mad.a 3: Inq.r e Vno, et altra si Lacinasse, e fac=
ciatum.te ameno di più D.a 2: Inq.r con D.a Sig.ra Inq.r con
D.r Card.r Cayonsachi, furbinam.te portato Via dal=
la Casa di D. Guido suo Marito d'un Inginocchia=
toio Serrato a Chiave del Letto de Calzoni di D. suo
Marito c.a 200 = Mon.a tra Oro, d'arg.to, Vn filo di Perle
Orientali da tenere al Collo di Valuta 200. c.a,
Vn paro pendenti con pietre di Diamanti di Valuta
scudi ottantaquattro = Vn anello con diamante in
mezzo di Val.a 40 = due pietre ad Vso di Perine
pendenti con suoi sigilli di Val.a 6 = Vn anello d'Oro
con pietra turch.a di Val.a 2 = Vn anello d'Oro con
pietra Vinata di Val.a 36 = Vn Vezzo d'ambra di Val.a
5 = Vn Vezzo di granati di Val.a 6. framezzati con
Bottoncini d'Oro = Vn paro d'Orecchini a Nauicella d'Oro
con perla di Val.a 16 = due Vezzi di diuerse pietre ordin.
di Val.a 4 = Vna Corona di Corniola di S. Pietro con Me=
daglie di Filog.a d'arg.to di Val.a 12 = Vn Abito di Damasco
con suo Manto e Sottana di Color pomo con fiori diuers.
di Val.a 40 = Vn Sottanino turchino fiorito di bianco di
Val.a 6 = due Putini da tenere sotto il manto di Val.a
12 = Vn paro di Manichetti di tutto punto di Val.a 10 =
Vn altro paro di Manichetti di Merletto rigirati di Val.a
5 = Vn Collaro di Val.a 4 = Vna Cinta di Taffetà
nero da Gialla con fiocco di Nastro di Val.a 6 = Vna
Cuffia ad Vso di Draggino stampato di Val.a 4 = due

zinali d'Oliuello con suoi merletti di Val.ª ℥ 18 = Vn paro di
Calzè di Seta incarnate di Val.ª ℥ 14 = Vn paro di Calzè
di Lana, Vn paro d'accio bianco, et Vn paro d'accio turchino
di Val.ª ℥ 5 = Vn Imbusto di Stametto tabaccato con dua
Sottane guarnito di ſpedina bianca, e incarnata di Val.ª
℥ 3 = Vn Casaccone di Stame, d'accio turchino e bianco
guarnito di ſpedina Incarnata, et altri Colori di Val.ª
℥ 10 = Vn Sottanino di Stame turchino e rancino rigato
di Lo Lungo di Val.ª ℥ 14 = Con sue rigè gialle, e di più Co-
lori da ſtidi; Vn Sottanino Stampato di Val.ª ℥ 9. Vna
Cuffia di Lustrino di Valore ℥ 6 = Quattro Camice da
Donna di panno lino di Val.ª ℥ 14 = Vn paro di Scarpe
con fibbie d'arg.to di Val.ª ℥ 10 = Molti galani, Fettuccie di più
sorte di Valu.ª ℥ 14 — Sei Forcagliolini fini di val.ª ℥ 3 = Vn Sboc-
chia di velo Sciamigliata di Val.ª ℥ 3 = Duo paia di Guanti
di Val.ª ℥ 4 = Quattro pezzuole da naso di Val.ª ℥ 5 — Vno Sca-
rolino d'argento da tenere il Tabacco con l'Arme di Casa
Franceſchini di Val.ª ℥ 16 = Vn Libro di D. Guido suo Mastro
ro con Scatto e Coperta della Serratura d'un Capone de-
ue eſſo Teneua parte della preda Robe, et il tutto Conue-
ſtisce in eſſo proc.to Contro la Volontà di Med.o auanti D.
Gou.to Ing.to Com.do Can.to Capomacchi, abiene con la p.ta Calata
le Mura della Città, siccome afba p.ta con i mat.i adulte-
rato, e d.to Dato Campo alla fuga di d.ta p.ta con d.to Can.to
nel Mese Sud.to Cons. Onde

Il Comm.to Cio. Areano fu di parere di Condennare arbitrariam.te
il d.to Ing.to in anni Cinque di Confino a Portoferraio piena
la Galera, altri p tanto tempo non oſſeruando Confino
di giorni 15. a Comparire e giuſtificarsi, la p.ta di Condan-
narla in ſpina della Corda, et alla Cattura di
volto con d.to Cicerno, ed il 3.o non molestarla più oltre
Con rilaſciarlo Libram.te dalle Carceri. Ma

La Ruota Criminale fu' di sentimento di condennare D. Ign.o
alla Galera a beneplacito di S. A. S. col disegnato riferuo,
quanto alla 2.da Sec.ra rimettendosi nel rimanente in Luogo
Pio sospese l'Espedizione. Et il 3.° che non annuia
fatto mal alcuno volontario circondò l'Inquisit.e

Tornò in d.° Negozio proposto avanti A. B. con
la Firma di 24. Nou 169?.

Sta' bene il parere della Ruota.

Inquisitum

Ego Joseph Vesinius I. V. D. et coad.r in Curia
Rob.e Crimin.is Florentiæ in fid.e

Romana Homicidiorum.

Ill.me, & Reu.me Dñe. NVpſerat ſiniſtris Auibus Dominus Guido Franciſchini nobili genere ortus Franciſcæ Pompiliæ, quam Petrus, & Violantes Coniuges eorum eſſe filiam etiam in eminenti Dignitate conſtituto aſſeruerant, & breui tempore adducta Aretium Viri Patriam vna cum eius Pſeudo Genitoribus cohibita fuit liberiorem viram ducere, quamuis prætextù ſterilitatis inuiſam fuiſſe commenta ſit, vt non obſcure depromitur ex eius depoſitione in Proceſſu fugæ; ægreferentibus ipſa, & Coniugibus aſſueram viuendi Libertatem ſibi denegari, inſtillarunt Puellæ, vt conquereretur coràm Reuerendiſſimo Epiſcopo, quod ſibi fuerat propinatum Venenum à Leuiro, & in actu diſceſſus Coniugum, qui ad Vrbem reuerſuri erant, deterrima ſuaſione inſuſſurarunt, imò in vim obedientiæ præceperunt, vt proprium Virum occideret, Cognatum, & ſocrum Veneno perderet, & Domum incendio conflagraret, ac ex indè (poſt tamen eorum diſceſſum, ne viderentur malum dediſſe Conſilium) ope Amaſij eligendi mæditatam fugam verſus Vrbem ad effectum perduceret, vt ex vna ex eius Epiſtolis in eodem Proceſſu clarè elicitur.

Domum reuerſi falſi Genitores, declarando Franciſcam non fuiſſe ab eis genitam, ſed conceptam ex incerto Patre per viliſſimam Lotricem, inſtituerunt Iudicium coram A.C. Thomato ſuper nullitate conſtitutionis Dotis.

Decreſcente in dies charitate Franciſcæ in eius Virum, & augente ſe Amore in quemdam Eccleſiaſticum, Res eo perducta eſt, vt ſtatuta nocte, qua ſomno Vir opprimebatur, vtinàm non data opera, & medicamine externo non procurato fugam è Domo Viri non ſine pæcuniarum furto, & in ſocietate eiuſdem Amaſij Romam petendo aggreſſa ſit; mæſtiſſimo Viro inſequente non procul ab Vrbe fuit carcerata, conſtructoque interim Proceſſu, Amaſius pro Adulterio fuit in Ciuitate Vetula relegatus, & ipſa in Conſeruatorio depoſita, ſed vrgente Vtero prægnante ad Domum Petri, & Violantis regreſſa partum, vtinám non conceptum Adulterino coitu, enixa, eſt, quod verecundiam, & dolorem auxit in viro, & ira

A diù

diù êxcitata adeò percreuit, vt vndique ammisso honore apud probos viros in ludibrium digito ostenderetur, præcipue in patria, vbi ingenuis hominibus summoperè cordi est bona æxistimatio; Quo circa Ira in furorem, dolor in desperationem ità infælicem virum adegerunt, vt satiùs ducens mori, quam inter honestos ignominiosè viuere, obcæcata mente iter arripuit ad Vrbem quatuor socijs septus, & nocte secunda labentis mensis Ianuarij specie dandi litteram Amasij Relegati properasse prætenditur ad illorum Domum, cuius ianua patefacta ad nomen Relegati, iugulasse Violantem, & Petrum, & confodisse Franciscam tot vulneribus, vt post paucos dies obierit.

Eadem desperatione durante improuidus, & hæbes animus modum se in tutum ponendi non suggessit, sed ijsdem Hominibus stipatus per viam consularem recto tramite ad patriam reuersurus in stragulo quiescens in quadam Caupona ab insequentibus Birruarijs cum socijs carceratus remansit.

Magnum quidem facinus, sed maximopere commiserandum, & excusatione dignissimum, cui sæuerissimæ leges indulgent, & mitissimè se gerunt erga Maritos notam Infamiæ delentes sanguine adulterarum Vxorum *l. Si Adulterium cum incæstu 38 §. Imperatores ff. ad leg. Iul. de Adulter. l. Marito 24. ff. eod. leg. Gracchus C. eod. leg. 2. §. Fin. ff. ad leg. Cornel. de Sycar. l. Si quis in graui 3. §. Si tamèn Maritus ff. ad Syllan. clar. §. Homicidium num. 49. Giurb. conf. 86. num. 9. Berlich. pract. conclus. §. 4. concl. 27. num. 152. Cabali. resol. crim. cas. 300. num. 5. Farinac. quæst. 121. num. 63.*

Quod idem sancitum fuerat in legibus Athæniensium, & solonis, hoc est sapientissimorum Legislatorum, & quod magis est in illo rudi sæculo Romuli *leg. 15.* ibi -- *Adultery conuictam vir, & Cognati vti volent necanto* -- vt refert ibi *Balduin. Piccard. in §. Item lex Iulia de Adulterijs num. 3. Instit. de public. Iudic.*, & similiter in *legibus 12. Tabul.*, vt refert *Aul. Gell. noct. Att. lib. 10. cap. 23. Tiraquell. ad leg. Connub. 15. num. 13. Couar. in Epitom. Decretal. lib. 4. part. 2. cap. 7. §. 7. in princ. & num. 1.*, *Ameseua de potest. in se ipsum cap. 13. num. 12. in fin.*, *Matthæu. de re crim. controu. 11. num. 8.*

Et præmisso non posse dubitari de Adulterio Vxoris, nedùm ex fuga simultanea cum Amasio per longum tramitem continuata, *Rimin. Iun. conf. 274. num. 31. Menoch. conf. 31. numero*

mero 22. *Farinacc. quæſt.* 136. *num.* 184. *Cruſ. de Indic. part.* 2. *cap.* 7. *num.* 27.

Ex litteris Amatorijs mutuò miſsis, quæ ſine nauſea in Proceſſu fugæ legi non poſſunt *Hoſtien. in cap. Præterea num.* 5. *verſ. de Adminiculis*, & *ibi Io: Andr. num.* 4. *Ancharan. num.* 3. *de Teſtibus*, *Pariſ conſ* 54. *num.* 64. *lib.* 4. *Rimin. Iun. dicto conſ.* 274. *numero* 9. *Farinacc. dicta quæſt.* 136. *num.* 126. *Cruſ. de Indic. dicta part.* 2. *cap.* 7. *num.* 7.

Ex Ingreſſu eiuſdem Amaſij Clandeſtino in Domum eiuſdem tempore ſuſpecto *in Proceſſ. fuga* 107 & *ſeq. Grat. conſ.* 50. *ante numerum primum*, & *num.* 4. *lib.* 2. *Crot. conſ.* 413. *num.* 35. *verſ. Idem deponit*, *Io: Bapt. Ferrett. conſ* 168. *num* 9. & *ſeqq* & *num.* 4. *Barſatt. conſ.* 69. *num.* 9. *Rot. diuerſ deciſ.* 95. *num.* 7. *part.* 2.

Ex oſculis in eadem fuga impiétis *fol.* 100. iuxta illud.

Viſus, & alloquium, tactus, poſt oſcula factum.

& probant *Abb. in cap. Tertio loco num.* 4. *verſ. vel ipſam oſculantem extra de præſumpt. Hoſtien. in dicto cap. Præterea num.* 5. *verſ. De Adminiculis etiam extra de Teſtib.* & *ibi Io: Andr. num.* 4. *Ancharan. num.* 3. *Ant. de Butr. num.* 9. *ad fin. verſ. Adminicula autem.*

Ex condormitione in eadem Caponæ cella 49. *Pariſ. conſ.* 160 *num.* 60. *lib.* 4. *verſ.* & *vlterius* optimè *Ioſeph. Fontanella conſil. crim. diuerſ.* 97 *num.* 29. *lib.* 2. *in paruis*, *Soccin. Iun. conſ.* 32. *numero* 16. *lib.* 2. *Io: Baptiſta Ferrett. dicto conſ.* 168. *num.* 1. *in fin.* & *num.* 11. *Menocch. de Præſump. Præſumpt.* 41. *num.* 11.

Sed etiam ex Sententia Iudicis, qui condamnauit Amaſium pro cognitione Carnali Ipſius, quæ notorium inducit *Cap. veſtra de cohabiti Cleric.* & *Mulier cap. fin. tit. eod.* & *in terminis viu. deciſ.* 297. *num.* 12. & 13. *lib.* 1.

Vltra quod hic non agitur de probatione Adulterii ad irrogandam Pœnam, ſed ad effectum excuſandi Occiſorem, & ad illius defenſionem, quo caſu leuiores probationes exhuberarent vt monet *Matheu. de re Crimin. d. Controu.* 11. *num.* 25.

Quibus præhabitis non obſtat aliquorum opinio aſſerentium non eſſe excuſabilem Maritum à Pœna ordinaria occidentem Vxorem Adulteram ex interuallo, ex quo prædicta Iura loquuntur de Vxore reperta in flagitio, & ſic incontinenti proinde non debent extendi ad Vxoricidium ex interuallo patratum, ex quo non debeant relaxari habænæ hominibus ad delinquendum, & ad ſibi Ius dicendum *Farinacc. quæſt.* 121.

num. 118. *Dominus Rainal. in ſuis obſer. Crim. cap.* 2. §. 4. *nu.* 156. *& cap.* 7. *in Rubr. num.* 117

Nam præterquamquod *Farinaccius* non firmat Concluſionem ſed nimis dubium ſe præbet ibi -- *Res apud me eſt valde dubia, nam pro mitigatione Pœnæ Cauſa honoris, & iuſtus dolor, qui ſemper Cor premit, multum ſtringit* -- quæ verba in noſtro propoſito benè ponderat *Matthæn. de re Crimin. Controu.* 12. *ſub num.* 22. & inſuper concludunt tàm *Farinaccius*, quàm *Dominus Raimaldus* Pœnam poſſe moderarí conſulto Principe.

Aduerti humillter ſupplico. quod prædicta Iura, quæ videntur require Repertionem in fraganti, vt aliqui opinati ſunt, id non ſtatuunt ad excuſandum Maritum motum ad occidendum ex repétino Iræ impetu, & inconſulto illius calore, ſed ne qualibet ſuſpicione Adulterii plerùmque vana ad occidendum, irruant Vxores ſæpè innocentes. proinde deprehenſio in Crimine à legibus requiſita non refertur, nec intelligitur de repertitione in actu Turpitudinis. ſed refertur ad probationem Adulterii, ne leuibus ſuſpicionibus Vxor, tradatur vltimo ſupplicio, vbi tamen non eſt dubitabile Adulterium, ad euitandam maximam Pœnam nullùm diſcrimen reperitur inter occidentem incontinenti & ex interuallo, *vt in puncto Donde ex gra. viden. Conſult.* 97. *num.* 17.

Quoties enim Vxor ſit de Adulterio conuicta, vel ſit Adultera manifeſta, ſemper dicitur in Crimine deprehenſa Glos. in cap. ex litterarum 4. *de eo qui dux. in Matrim. qua poll. per Adult. in verb. deprehenſam ibi - Ideſt conuictam ſola enim deprehenſio non ſufficeret ad hoc, vt ſepararetur, licet ſufficiat ad infamiam - Gloſ. in l.* 1. *ſub verbo deprehenſus C. vbi Senat. vel Clariſ. Bartol. in l.* 1. *num.* 1. *C. de Petit. Bonſublat. lib.* 10. *to. de Plat. in Rubric. C. eod. num.* 1. *Caball. Reſol. Crim d. Caſ.* 300. *num.* 26. *Bertazzol. Conſil. Crim.* 42. *num.* 10. *Matthæu. de Re Crim. d. Centrou.* 12. *num.* 5. *optime Sanfelix. deciſ* 337. *nu.* 91. *& ſeqq.* E de Vxore conuicta loquitur *d. lex Romuli.*

Et in rei veritate rationes adductæ per ſectantes contrariam opinionem ſunt nimis debiles. Homicidium enim ex cauſa Honoris commiſſum quotieſcunque committatur, ſemper dicitur incontinenti commiſſum, quia honoris læſio ſemper ante oculos ſedet, & aſſiduis, ac inceſſantibus ſtimulis præmendo, ad ſui reparationem ſollicitat, & impellit *Giurb. conſ.* 86. *num.* 18.

18. & 19. *Balthaſ. de Angel. in Addit. ad Gizzarel. deciſ.* 18. *num.* 5. *Prat. Reſponſ. Crim.* 25. *num.* 5. *in fin. Sanfelix. d. deciſ.* 337. *num.* 50.

Relaxatio Habænarum Maritis ad ſibi ius dicendum eſſet ſolumodo conſiderabilis, ſi adhuc vigeret lex Repudii, hoc enim caſu non eſſet permittendum Maritis ius ſibi dicere pro reparatione ſui honoris, nam alia Via ſatis ſibi conſultum eſſet facultate ſcilicet dimittendi, & repudiandi Vxorem pollutam & ſic cauſam Turpitudinis, imò ipſam ignominiam procul' a ſe abiicre poſſent; At poſtquàm Diuina fauente gratia gentilis Cæcitas eliminata eſt, & agnitum fuit Matrimonium eſſe perpetuum, & indiſſoluibile, ſunt miſeratione digniſſimi, qui precluſa ſibi omni alia via, honori ſuo litando Cruore Adulterarum Vxorum maculas detergunt *Petr. Erod. Rer. Iudicat. lib.* 8. *tit.* 1. *de Adulter. cap.* 1. vbi poſtquam de huiuſmodi re diſſeruit iuxta normam iuris Romanorum in fine addit ibi *Spe enim ſublata ſecundi Matrimonii, quamdiù Adultera ſuperſtes erit, durius æxiſtimamus iuſtiſſimum dolorem niſi tanto tempore extingui, Itaque qui Diuortio non terminatur terminatur Homici diofit (inquit Auguſtinus) quod non licet, vt liceat, hoc eſt vti alteraducatur, altera occidatur.*

Fateor eſſe laudabile refrenare Maritorũ Audaciam, ne in propria Cauſa ius ſibi dicant; quia poſſunt decipi, ſed laudabiliùs profecto eſſet cohibere ſalacitatem Vxoribus; ſi enim modeſtè ſe gererent, & honeſtè viuerent, non vtique Viros impellerent ad huiuſmodi fere dixerim neceſſaria facinora, neque negare poſſumus ex ignominia Adulterio illata non exaſperari, Veſanos reddi, & iuſtiſſimum dolorem in corde excitari, qui omnem alium ſine comparatione præcellit, maiorem proinde commiſerationem meretur iuxta illud Satyrici.

Exigit iſte Dolor plus quam lex vlla Dolori
conceſſit.

Quod bene agnouit *Papinianus in l. ſi Adulterium cum incaſtu §. Imperatores ff. ad l. Iul. de adulter.* ibi - *Cum ſit difficillimum iuſtum dolorem temperare l. Gracchus Cod. eod.* Ex quibus Doctores inferunt iuſtum dolorem lænire pænam etiam in præmeditatis facinoribus, quia iuſtus dolor non facile reſedit, nec tractu temporis vires amittit, ſed ſicut Infamia aſſiduo cor pungit, & quo durat Infamia ipſe durat, imò augetur

Afflict. ſuper Conſtit. Regn. Neap. lib. 3. de pœna Vxorum in adulterio Rub. 46. num. 1. in fin. & num. 2. Facchin. conſ. 36. num. 11. lib. 2. Caball. reſol. crim. d. Caſ. 300. num. 66.

Eò intenſiùs impellit, quo magis impune, vt ita dicam, Vxores matrimonia fædant, & totius Domus honorem coinquinant; Antiquo tempore, vigente *lege Iulia* Vxores maritales Thalamum fædantes vltimum ſupplicium ſubibant *l. quamuis la. 2. C. ad leg Iul. de adulter. l. tranſigere C de tranſact. §. item lex Iulia de adulteryis Inſtit. de public. iudic.* Prout ſãcitum fuerat in Sacris Litteris, Vxores enim adulteræ lapidibus obruebantur *Geneſ. cap. 38. Leuit. cap. 20. verſ. 10. Deutheronomi: cap. 23. verſ. 22. Ezechiel. cap. 16.*

Solatium ex publica vindicta ſumptum ſedabat dolorem, infamiam delebat, & primæuæ libertati Coniux reſtitutus, noua ſed honeſta inducta Vxore, in decore filios ſuſcipiebat; At modo, mala noſtra tempeſtate; ob deplorabilem ſceleris frequentiam vbique locorum obſoleto Sacrarum Legum rigore, cùm agatur mitiſſimè contrà Vxores turpitèr viuentes, infæliciſſima eſſet Maritorum conditio, ſi aut viuendum eſſet perpetuò cum infamia, aut illius abolitio, morte Vxoris mediãte, expianda eſſet vltimo ſupplicio, vt bene conſiderat *Matthæu. de re Crim. d. controu. 12. num. 27.*

Quocircà vbi queritur, vt Maritus toraliter impunis euadat, tũc requiritur, quod Vxor occidatur in actu turpitudinis reperta at vbi quæſtio ſit, an Maritus Vxoricida cauſa honoris impulſus mitius puniatur, nihil intereſt, an incontinenti, vel ex interuallo coniugem occidat, *Matthæu. de Re Crim. d. controu. 12. num 16.*

Nec talis Sententia caret fundamento in ipſo Iure Ciuili Romanorum, *Martianus enim in l. Diuus Adrianus ff. ad l. Pompe. de Parricid.* aſſerit Patrem, qui Filium in venatione necacauerat ex quo nouercam polluerat adulterio, fuiſſe deportatum, nec tamen illum reperiat in ipſo flagitio, ſed in venatione, hoc eſt interuenientibus actibus amicitiæ, diſſimulata iniuria proindè fuit punitus, ſed extra ordinem, quia non Iure Patris, ſed potiùs more Latronis filium interfecit, vndè deſumere poſſumus non fuiſſe punibilem occiſionem, ſed occiſionis modum, quemadmodum deducimus *ex Bartol. ibi, & Caiac. in ff tit. 40. num. 5. in Addit. litt. E.* optimè *Decian. tractat. Crimin. lib. 9. cap. 8. num. 11. Bertazzol. conſilio 356, nu.*

356. num. 18. Farinac. conſ. 66. num. 5. Dondeu. conſult. 97. num. 5.

Præterea eſt conſideratione digniſſimum, quod pro tutela ſui corporis impunè licèt Aduerſarium occidere, ſed incontinẽti, & in ipſo actu aggreſſionis, non autèm ex interuallo, quia per occiſionem Occiſoris non reparatur vita illius, qui ab ipſo occiſus eſt, proindè quidquid poſt primum homicidium ſequitur, tendit ad vindictam legibus exoſam, & odioſam, quia quoquo modo læditur Iuriſdictio Iudici, auferendo facultatem puplice vindicandi homicidium, ſed ſi per mortem homicidæ poſſet in vitam reuocari occiſus ab eo, non puto eſſe dubitabile, quin liceret cuilibet dictum interfectorem interficere, quia non eſſet vltio, ſed mera defenſio tendens ad recuperationem Vitæ ademptæ; At vbi ſumus in offenſione, & iniuria non tangẽte Perſonam Iniuriati, ſicuti permiſſum eſt furtum paſſo occidere furem pro recuperandis bonis ablatis, etiam ex interuallo, quoties præcluſa ſit omnis alia via illa recuperandi *Farinac. quæſt. 125. num. 216.* Ità pariformitèr omni tempore permitti debet offenſo in ſua exiſtimatione occidere Iniuriantem, nam non dicitur vlciſci iniuriam, ſed refarcire honorem ſuum labefactatum, qui nullo alio modo reparari poteſt, vt ratiocinatur *Dondeu. d. conſult. 97. num. 15. & 16. & idem ſentit Sanfelic. d. deciſ. 337. num. 47. ad 49. & ſeq. & num. 87.*

Vltra quod, vt dixi, quando agitur de defenſione vitæ, agitur de actu inſtantaneo, ideoque Ira ex ea concepta debet aliquando reſidere, iuxta monitum *D. Pauli ad Epheſ. 4.* ibi- *Sol non occidat ſuper iracundiam veſtram* - Sed quando ſumus in offenſione honorem lædente, hæc non eſt momentanea, ſed habet tractum ſucceſſiuum, imò lapſu temporis eo maior euadit, quo plus vilipenditur iniuriatus, ideò quotieſcumque ſequatur homicidium, ſemper dicitur immediatè commiſſum, *Sanfelic. d. deciſ. 337. num. 50. vltra alios citatos.*

Proinde his, & aliis rationibus fræti communiori aſſentientium Calculo Doctores firmarunt, Maritum occidentem Vxorem Adulteram ex intetuallo, & non repertam in actibus venereis puniri quidem, ſed mitiùs, & extra ordinem, *Bart. in l. Diuus ff. ad l. Pomp. de Parricid. Bald. conſ. 312. num 5. lib. 4. Alex. conſ. 140. num. 9. lib. 2. Afflict. in Conſtit. Regni Si Maritus num. 1. Rub. 46. lib. 3. Tuſch. practi concluſ. litt. A. concluſ.*

143. *num.* 31. *Ruin. conſ.* 2. *num.* 7. *lib.* 3. *Honded. conſ.* 104. *num.* 30. *vol.* 1. *Bertaz zol. conſ. Crim.* 42. *per tot. Io. Franc. de Pont.* 98. *num.* 8. *& ſeq. lib.* 1. *Marta vot. Piſ.* 206. *per totum Ginrb. conſ.* 86. *num.* 19. *&* 21. *Viu. deciſ* 241. *num.* 26. *&* 27. *Grammat. deciſ.* 13. *num.* 6. *Gizzarell. deciſ.* 18. *num.* 4. *&* 5. *Sanfelic. dec* 264. *n.* 5. *& d. dec.* 337. *per totũ Matthæu de re Crim. d. controu.* 12. *nu.* 21. *& per tot. Thor. Compend. deciſ. Verb. occidens Vxorem ante med. verſ. alias ſi ex intervallo part* 3. *ſect.* 2.

Et idem practicatum fuiſſe in diverſis Orbis Tribunalibus teſtantur *Caball. dicto caſ:* 300. *num.* 45. & alios caſus recenſet ſimilitèr deciſos *Caluin. de æquitate lib.* 1. *cap.* 58. *num.* 18. 30. *&* 31. *Cyriac.* qui loquitur in grauioribus terminis *controu* 105. *in fin. Matthæu* plures etiam caſus deciſos refert *dicta controu.* 12. *in fin.* & alios quamplurimos adducunt Doctores mox citati.

Quæ benignior ſententia facilius amplectenda eſt, vt authumo, quia factum, de quo agitur, etiam, iuxta ſenſum fiſci non fert ſecum circumſtantias præferentes tam rigoroſam pœnam. Non quidem aſſumptio ſociorum adhibitorum in homicidijs, quià licitè potuit vti opera comitum, vt tutiùs potuiſſet morte vxoris ſuo honori conſulere *Caſtren. conſ.* 277. *lib.* 2. *Soccin. Iun. conſ.* 34. *num.* 12. *lib.* 2. *Pariſ. conſ.* 154. *num.* 7. *&* 8. *verſ. Quinimo, & num.* 16. *lib.* 4. *Cæpoll. conſ crim.* 4. *ſub. num.* 13. & per innumeros *Caball. d. caſ:* 300. *num.* 59.

Neque delictum in altiorem ſpeciẽ enehitur ex quo ſocios conduxit pacta mercede, quià licitè poteſt maritus, quod magis eſt, & ſine comparatione admirabilius alijs demandare homicidium vxoris adulteræ mediante pœcunia, vt inconcuſſe firmarunt *Bald. in l. Gracchus num.* 5. *C. ad l. Iul. de Adulter. Afflict. in conſtit. Regni lib.* 1. *Rubr.* 8. *de cultu Paciſ num.* 8: *Mazzol. conſ.* 57. *num.* 18. *Carer. Pract. crim. §. circa itaque num.* 5. *ſub verſ. ad inſtar hoſtis verſ. tamen Baldus fol. mihi* 192. *& §. excuſatur num.* 13. *verſ. in tanta fol. mihi* 196. *Alex. Rauden. var. reſolut. cap.* 7. *num.* 5. *verſ. & mediante aſſaſſinio, Paſchal. de Patr. Poteſt. lib.* 1. *cap.* 5. *num.* 23. *verſ. qui dicit hanc vindictam, Viu. deciſ.* 197. *num.* 25. *lib.* 1. *Mart. vot. Piſan.* 206. *num.* 9. *Gramm. ſuper conſtit. Regn. ſi maritus n.* 12. *lib.* 3. *Cæpoll. conſ. crim.* 73. *n.* 11. *verſ. ſed hoc reſpondendum, Caluin. de æquitate lib.* 1. *capit.* 58. *num.* 30.

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militèr nil turbat, quod Dominus Guido in ipso actu fugæ potuerit vxorem, & Adulterum occidere repertos in caupona Castri noui, sed potiùs voluerit eos carcerari querens puniri iure medio, & non de facto. Quoniam negamus potuisse tuto vtrumq; interficere, quia erat solus, nec poterat sine vitæ discrimine eos aggredi, quia Amasius est viribus pollens, nunquam timidus, & nimis ad resistendum promptus; dum ex dicto vnius testis in Processu fugæ vocatur — *Scapezza collo* — nec est credibile, nisi fuisset animosus, & interritus aggressum esse tam grande facinus, ausum fuisse participem esse fugæ, & sociare claribus viri profugam vxorem; Et apertiùs desumitur ab vna ex eius epistolis, in qua hortando Franciscam, vt in Lagenis somniferum medicamen admisceret ad opprimendum somno virum, & domesticos, subiungit, quod quatenus præsensissent, aperiret quidem ianuam, nam vel mortem cum ipsa subiturus esset, vel ab eorum manibus eam eripuisset, quæ indicant audaciam, & fortitudinem: Et licèt vxor esset fœmina, hoc est imbellis, & timida, nihilominus Franciscа nimis Procax, & audax siue ob odium erga maritum, siuè ob iram conceptam ex carceratione Amasij Gladium strinxit contra virum coram Birruarjs eam carceraturis, & ne vlteriùs progrederetur, necesse fuit, vt ab eius manibus ab adstante euelleretur, vnde non potuit ante carcerationem illorum quod meditatus fuerat, & sibi licebat, ad effectum perducere, quia erat solus, & viribus impar; Deinde ad carceres adducta, & postmodum in conseruatorio depositа, impossibile ei fuit suum honorem vindicare, sed è Monasterio exgressa, & ad domum Petri, & Violantis redacta, primum, quo potuit vltus est, proindè habetur ac si in fraganti, & incontinenti eam interfeciſſet, *Sanfelic. dicta decis. 337. num. 58. in fin. 59. & 60.* vbi quamuis maritus potuisset eam incontinenti occidere, & non interfecit, sed dissimulando quam citiùs potuit ab ignominia nece vxoris se exemit, *& num. 90. circa finem, Giurb. d. cons. 86. num. 19. & 21.* vbi quia non agitur de iniuria personali, sed reali, vt supra dictum est.

Curauit eius capturam, & instetit, vt puniretur, ne adulteria, & Flagitia continuaret, & impotens ad aliud peragendum, quod confusio mentis, rabies inualida, & verecundia suasit inconsultò peregit, non vt sibi ius adimeret proprijs manibus recuperare honorem amissum; Querelauit quidem, sed quia

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occidere non potuit, nec ex illius carceratione, & punitione fuiſſet deterſa ignominia, & abolita infamia, imò cum poſt illius carcerationem magis arceretur à cœtu nobilium, ſemper acerbior reddebatur iniuria, & feruentius ſtimulabat ad reparandam ſuam exiſtimationem, præcipuè augebatur animi mœror præſentiendo fuiſſe regreſſum in Domum Petri, & Violantis, qui declarauerant non eſſe eorum filiam, ſed inhoneſtæ mulieris, vnde augebatur iniuria permanendo in domo ſuſpecta, vt paulo infra dicetur, & proinde eadem cauſa militat tã poſt egreſſum, e Monaſterio, quam ante carcerationem, & inſtantias factas per Dominum Guidonem.

Parum etiam refert, quod Franciſca permaneret in domo Violantis de conſenſu fratris dicti Domini Guidonis aſſignata pro tuto carcere; Nam quicquid ſit an de conſenſu ipſius Domini Guidonis educta eſſet à Monaſterio, de quo nullum verbum habemus in Proceſſu, potuit id diſſimulare, vt aditum habere potuiſſet ad eam occidendam, vt honor, eius reintegraretur, nec huiuſmodi diſſimulatio delictum auxiſſet, præcipuè ad pœnam ordinariam, cum certum ut abſque illius incurſu poſſe vxorem adulterio pollutam necari, quamuis modo maior modo minor pœna ingeratur, quo maior, vel minor proditio interceſſerit, vt in Senatu Matritenſi pratieari teſtatur *Matthæu. de re crim. d. controu* 12. *num* 29. & 30.

Nec mœretur conſiderari circumſtantia loci dati pro Carcere, quaſi quod læſa fuerit Principis Cuſtodia, quia, præterquam quod non dicitur eſſe in Cuſtodia, qui detinetur in aliquo loco cum fideiuſſione de non egrediendo *Angel. in l. qui in Carcerem ff. de eo quod met. cauſ. Capyc. deciſ.* 154. *num.* 4. *Farinacc. quæſt.* 30. *num.* 58. & *eſt text.* non obſcurus *in l. ſuccurritur in fin. ff. ex quib. Cauſ. maior.* ibi - *Cuſtodiam autem ſolum publicam accipi Labeo putat* - & ibi *gloſſ.* in verb. *Putat*.

Obiectum fundjtùs corruit, quia circumſtantia huiuſmodi loci crimen non exaſperat, quotiès committatur à Prouocato, & ad propulſationem Iniuriæ, vt in fortioribus terminis de delicto commiſſo intra Carceres *Mar. Mut. deciſ.* 36. *Ricc. deciſ.* 245. *part.* 3. *Merlin. Pignatell. controu. Forenſ. cap.* 66. *num.* 28. & 29. *Centur. prima*.

Demum ob Homicidia Petri, & Violantis ex ſupra deductis augeri Pœnam non poſſe credimus, quià eadem cauſa Honoris,

quæ

quæ impulit Dominum Guidonem, coegit etiàm perdere dictos coniuges. Parcant interim Defunctorum Cineres, si ea, quæ supra retuli, & quæ dicturus sum, videantur turbare eorum Pacem, quia non Odij fomes, nec Iræ impulsus, quorum causas procùl habeo, suggesserunt, sed Defensionis necessitas non vno titulo assumptæ compellit omne, quod ad finem exoptatum conducit, in medium proferre.

Dixi, &, vt puto, non immeritò Dominum Inquisitum profilysse ad vtriusque Internicionem motum simplicitèr iniuriæ de directò lædente suam æxistimationem; Post enim paucos menses à die Matrimonij contracti cum Franciscа, quam esse eorum Filiam professi fuerant, non erubuerunt declarare non esse talem; Hinc est ineuitabile Dilemma; Aut verè, & realitèr fuerat ab ipsis genita, & cogentur fateri, negando postmodum Filiationem, impressisse maximam Iniuriam Honori, & existimationi Domini Inquisitì; & elicitur magnum odium, & Liuor in eis contra eumdem, quem, vt Ignominia afficerent, veluti desponsasset Filiam vilissimæ, & inhonestæ Mulieris, non curarunt de honestare propriam Filiam; Hoc vnum est, quicumque agnoscit Dominum Guidonem, apprehendet Matrimonio se copulasse cum Puella ne dum disparis, sed etiàm infimæ, & inhonestæ conditionis, quod summoperè lædit æxistimationem totius domus.

Aut in veritate Franciscа procreata fuit ab incerto Patre, & in lucem ædita per inhonestam Lotricem, & non poterit negari non fuisse maiori iniuria affectum inurente notam infamiæ, tùm respectu Natalium, tùm quia solent Filiæ non diffimiles esse Matribus *Cephal.conf.*140.*num.*30. *Farinacc.conf.*24.*num.* 15.*& quæst.*136 *num.*99. *Boss.in Pract.tit.de Plur. violent. nu.* 68.*in fin.* Et est *text.in cap.si gens Anglorum* 56.*dist.* ibi *de tali commixtione mæretricum, æstimandum est, degeneres Populos, & Ignobiles, & furentes libidine* - Et vtinam experientia nos non docuisset!

Credidit Infælix vir nubere Filiæ Petri, & Violantis ex legitimo Matrimonio natæ, & nihilominùs opera, & fallacia dictorum coniugum nupsit Puellæ deploratæ conditionis, conceptæ ex inhonesta Matre fornicario coitù; Hinc delumi tas est, cuius qualitatis essent coniuges prædicti, qui, vt fraudarent legitimè vocatos ad Fideicommissum partum vilissimum

suppo-

ſuppoſuerunt, immemores Reos factos eſſe vltimi ſupplicij *L. prima, C. ad leg. Cornel. de falſ Marſilan. l. ſi mulierem num. 3. ff. ad leg. Cornel. de Sycar. Io. de Anan. in cap. Ad falſarium num. 11. in fin. de Crim. falſ. Boſſ. in Pract. tit. de Partu ſuppoſito num. 1. Boer. deciſ. 82. num. 8. in fin. Afflict. deciſ. 404. num. 17. in fin. verſ. Item in eo Peguer. deciſ. 80. num 8.*

Non erit igitur difficile creditu quę Franciſca in Epiſtola ſuppoſuit ſuo Leuiro, quod prædicti coniuges, & ſi ipſa bene tractaretur inſtabant quotidiè, vt virum, Cognatum, & ſuocrum veneno perderet, & incendio Domum conſumeret, quæ licèt peſsima ſint, adhuc peius conſilium, etiam in vim obedientię dederunt, vt ſcilicèt poſt eorum diſceſſum ab Aretio captaret Amaſium, ipſoque Comite à Domo viri diuertendo, ſe conferret ad Vrbem, proùt veluti obedientiſsima Filia nimis quippè prompta paruit mandatis. Quis igitur negabit, non eſſe tribuendum huiuſmodi Auſum temerarium, ex quo notorium factum fuit obbrobrium diffuſum toti Domui Domini Inquiſiti, perſuaſionibus impijs dictorum Coniugem? Nec fuit difficile perſuadere Puellæ ea, ad quæ propenſa erat inſtinctu originario, & exemplo Matris.

Ad quid autem tàm anxiè deſiderarent Coniuges regreſſum Franciſcæ ad eorum Domum, non eſt meum diuinare, non tamèn poſſum mihi perſuadere, quod mouerentur ex mera Charitate, vt ſcilicèt ſe eriperet à malis tractamentis, dum fatetur Franciſca in dicta Epiſtola ducere vitam tranquillam, virum, & Domeſticos cum ea optime agere, & ea, quæ Reuerendiſsimo Epiſcopo ſuppoſuit fuiſſe falsò commentata dictis coniugibus. Scio inſupèr, quod ſi vir notum habens Adulterium Vxoris, eamque Domi retineat, notam, & Pœnam Lænocinij euitare non poteſt *L. 2. §. Lenocinij, l. Mariti Lenocinium ff. ad leg. Iul. de Adulter. l. 2. Cod. eod. Manoch. de Arbitrar. caſ. 534. num. 23. Farinacc. quæſt. 144. num. 94. & 98.* Si ergo, vt dicti coniuges exagerabant, Franciſca non erat eorum Filia, cur eam poſt detectum manifeſtè Adulterium in domum teneriſsimè receperunt, &, vt ita dicam, in ſinù confouerunt nedum vſque ad æditionem Partus, ſed etiam vſque ad mortem? Et vtinam ibi non perduraſſent Amores cum Relegato! dùm ad ſimplex nomen illius, percepto à pulſante Ianuam, quod redditurus erat Epiſtolam dicti Relegati, ſtatim

ſtatim patefacta fuit Ianua, factus fuit aditus Marito ad recuperandum Honorem, nam ſi dicti Coniuges male ſenſiſſent Adulterium Franciſcæ, horruiſſent quidem ſine dubio nomen Adulteri, & omnem aſtruxiſſent viam mutuæ correſpondentiæ; Ex quibus euidentiſsimè patet, continuaſſe cauſam Honoris læſi in Domino Inquiſito, imò nouas cauſas emerſiſſe eiuſdem ſpeciei, quia omnes tendebant ad deturpandam eius æxiſtimationem.

Nec quicquam facit, quod plures Cauſas odij recenſeat Dominus Inquiſitus tàm contra Franciſcam, quàm contra Coniuges, quia ſi bene perpendantur, omnes coincidunt, & rediguntur ad originalem Cauſam, nempè Honoris læſi, Vtcumque ſit, quandò Cauſæ ſunt inter ſe compatibiles, adhuc vrgentiori, & pinguiori actus ſequtus tribuendus eſſet *Rot.cor. ſan.mem.Alex.VIII. dec.168.num.5.* & in puncto, quod concurrentibus pluribus cauſis, Homicidium referatur, & tribuatur cauſæ Honoris, & non alijs *Matthæu.de re crim. d. controu. 11. num. 38. & 39.*

Quam obrem puto, quemlibet Cordatum Hominem debere fateri iuſtiſſimam cauſam habuiſſe occidendi prædictos Coniuges, & iuſtiſſimum dolorem fuiſſe excitatum, atque in dies auctum humana conſideratione, quod non nupſiſſet illi, niſi deceptus fuiſſet à Vaferrimis Coniugibus; Et prædictis additur, quod aut Partus æditus fuerat conceptus ex Adultero, vt D. Inquiſitus credere poterat, neſciens in fuga Vxorem eſſe prægnantem, & non poſſumus negare, ex pactu prædicto non fuiſſe nouam cauſam excitatam, ſiue Priorem renouatam; Aut genitus fuerat à legitimo Patre, & quis negabit, ab illius occultatione iraſci denuò non debuiſſe ammiſſione Filij? Ex vtraque cauſa maximus dolor conceptus, cui eſt vis maxima, excuſationem mæretur, adeòut quamplurima Delicta atrocia iuſti doloris impulſu perpetrata à quauis pœna impunita remanſerint, vt notant *Alex.ab Alex.in Summ.4.par.q.86.membr. 3. art. 1., Tiraquell. de Pœn. temperan.Cauſ. 1.num.16.in fin.* Quod etiam innuit *text.in d.l.Gracchus C.ad l. Iul. de Adulter.* ibi - *Tamèn quia nox, & dolor iuſtus factum eius releuant, poteſt in exilium dari* - *Harprect.in §.Item lex Cornel.de Sycar.n.212. Inſtit.de Publ.Iudic. Abbas in cap.olim num.6.de Reſcript. Angel. in l.ſi Adulterium §.Imperatores nu.2.ff.ad leg.Iul.de Adulter., Rimin.Iun.conſ.136.ſub nu.6.inter conſ.Crim diuerſ.tom.primo,*

Ber-

Bertazzol. conſ. 243. *num.* 7. *& conſ.* 286. *num.* 6. *& conſ.* 505. *nu.* 30., *Giurb. conſ.* 86 *nu* 8. *Verſ. Et vbi iuſto dolore Prat. Reſponſ.* 25. *num.* 41. *Conciol. Alleg.* 87. *num.* 4.

Et non ſemel in contingentia facti euaſerunt Impunes qui iuſto dolore moti appoſuerunt manus etiam in Innocentes; Mulier enim quædam Smirnea Virum, & Filium ex eo conceptum interfecerat ex quo Vir perdiderat filium ſuum primi matrimonij, accuſata deinde apud Dolabellam Proconſulem, neque duabus cædibus contaminatam liberare, neque iuſto dolore impulſam condemnare voluit, ſed remiſit ad Areopagum Sapientiſſimorum Iudicum Cætum, vbi, cognito de Cauſa, reſponſum fuit, vt ipſa, & Accuſator poſt centum Annos redirent, & ſic duplici Parricidio Rea, quàmuis etiam Innocentem occidiſſet, vndequaque euaſit Impunis, vt refert *Valer. Max. Dictor. factor. memorab. lib.* 8. *cap.* 1. *de Public. Iudic. verſ. Eadem hæſitatione, Tiraquell. de Pœn. temperan. d. Cauſ.* 1. *nu.* 17. *circa med. Menoch. de Arbitrar. caſ.* 356. *num.* 60. *Cyriac. contr.* 105. *num.* 39. *Gramm. dec.* 5. *num.* 23.

Similiter Vxor, quæ mandauerat Homicidium Viri ob iuſtum dolorem ex denegatione debiti matrimonialis fuit Pæcuniaria mulcta punita, & ad temporalem permanentiam in Monaſterio, vt teſtatur *Cyriac. d Controu.* 105. *in fin.*

Hæc ſane procederent, quoties Dominus Inquiſitus eſſet de prædictis confeſſus, vel legitime conuictus, quorum neutrum affirmari poteſt, multò igitur magis admittenda ſunt, dum fatetur dediſſe dumtaxat ordinem ad incidendam faciem Vxoris, vel ad ſtriſiandum; & ſi Mandatarij mandatum exceſſiſſent, non vtique de exceſſu teneretur *Decian. tract. crim. lib.* 9. *cap.* 36 *nu.* 6. *verſ. Et Ego vnum defendi, Clar. §. fin. quæſt.* 89. *num.* 5. *Menoch. de Arbitrar. caſ.* 352. *num.* 3. *Farinacc. qu.* 135. *num.* 156.

Socij, & Comites illum nominant, & profitentur cædibus interueniſſe; ſed præterquamquod Fiſcus prætendit in quam plurimis veritatem occultaſſe, non patitur Æquitas, vt eorum Depoſitione ſcindantur, & pro parte tantum accipiantur, cum mendax in vno, talis cenſeatur in omnibus; Exhuberaret ad adimendam eis omnem Fidem, quod in Tortura coram ipſo maculam non purgauerint *Scacc. de Iudic. lib. prima cap.* 86. *num.* 56. *Farinacc. q.* 43. *num.* 134. *& ſeqq. Cartar. Pract.*

In-

Interrog. Reor. lib. 4. cap. 1. num. 14., *Honded. conf. 100. num. 2, & 16. lib. 1. Caball. Resol. crim. Cas. 85. num. 11.*

Licuit ad defensam iustius Nobilis Viri currenti. vt aiunt, Calamo hæc deducere præ temporis angustia, quæ non passa est alia fundamenta cumulare, quæ paruo labore, & forsan non inutiliter coacernari poterant, quàmuis credam exhuberantèr satisfactum esse obiectionibus, quæ pro parte Fisci excitari possent'

Quare &c.

H. de Arcangelis Pauperum Procur.

Illuſtriſs. & Reuerendiſs. Domino

GVBERNATORE

In Criminalibus

Romana Homicidiorum.

P R O

Domino Guidone Franciſchino
Carcerato.

C O N T R A

Fiſcum.

Memoriale Facti, & Iuris.

Romæ, Typis Reu. Cam. Apoſt. 1698.

Romana Homicidiorum.

Illuſtriſs.^me, & Reu.^me Dñe. EX Proceſſu fabricato in hoc eodem Tribunali, & ab ipſomet D.meo Venturino Iudice præſentis Cauſæ ſatis, ſuperque conſtat de Adulterio commiſſo per Franciſcam Pompiliam Vxorem D. Guidonis Franciſchini Nobilis Aretini cùm Canonico Caponſacchio, cùm quo conſpirantibus eiuſdem Franciſcæ Pompiliæ Genitoribus, quamuis hic in vrbe degentibus, tradito priùs ſomnifero eidem Domino Guidoni, totique eius Familiæ noctis tempore eadem aufugit è Ciuitate Aretij Vrbem verſus, ità, vt memoratus Canonicus fuerit hac de Cauſa Relegatus in Ciuitate Vetula cùm expreſsione facta in Decreto dictæ Condemnationis Cognitionis Carnalis eiuſdem mulieris; Conſtat etiàm de dicto Adulterio ex aliis in facto deducendis per Dominum meum Procuratorem Pauperum, ità, vt nullus remaneat hæſitandi locus ſuper hoc, quin potiùs prædictum Adulterium dici poſsit notorium hìc in Vrbe, in Patria dicti D.Guidonis, & in vniuerſa Hetruria.

Hoc ſtante tutè aſſerere poſſumus, quod quamuis idem D. Guido eſſet confeſſus de nece Inflicta dictæ ſuæ Vxori, cùm complicitate, & Auxilio Blaſij Auguſtinelli de Ciuitate Plebis, Dominici Gambaſsini de Florentia, Franciſci Paſquini de Caſtro montis Acuti, & Alexandri Baldeſchi Tiphernatis; non propterea veniret puniendus Pœna ordinaria, ſed mitiori, ex Reſcripto Diui Pij relato ab Vlpiano I.C. *in l. ſi Adulterium* 38. §. *Imperatores ff. ad leg. Cornel. de Adulter.* & à Martiano pariter I.C. in *l. prima §. fin ff. ad l. Iul. de Sicar.* Vtrobiq; enim dicitur, quod humili loco natus in exilium perpetuum datur, nobilis verò ad tempus relegatur; Ignoſcitur ſiquidem Marito tunc iuſtum Dolorem exequenti, vt ſuppetit idem Vulpian. in *l. ſi quis in graui. §. ſi quis moriens in fine ff. ad Sen. Conſult. Syllan.* Difficillimum cùm ſit illum temperare, vt habetur *in dicta l. ſi adulterium cùm Inceſta* 38. §. *Imperatores, ff. ad leg. Iul. de Adulter.*

Et ità conciliando Antonomiam *leg. nec in ea* 22. *ff. eodem Tit.* benè declarat *ibidem gloſſ. in verbo omnem, & in dicta l. prima*

A §. *fin.*

§ fin. v. Reſcripſit, verſ. ſed videtur, ff. ad leg. Cornel. de Sicar. & in dicta l. ſi quis in graui. §. ſi quis moriens, verbo Ignoſcitur. ff. ad S.C. Sillanian. & tenuerunt Doctores communiſsimè, ſignantèr *Alberic. Rayner. & cæteri ſcribentes in l. Gracchus, Cod. ad leg. Iul. de Adulter. Angel. in dicta l. ſi Adulterium cum Inceſtu. §. Imperatores, num. primo, & 2. ff. eodem, Pariſ. conſ. 154. num. primo, & 2. lib. 4. Giurb. conſil. 86. num. 9. Soccin. Ian. conſ. 34. num. 5. & ſeqq. lib. 2. Bertazzol. conſil. Crimin. 42. nu. primo, Tiraq. leg. Connub. 12. ſub num. 3. Angel. de Malef. in verbo Che hai adulterato la mia Donna, verſ. aduertas tamen, pagina mihi 118. à tergo, Neuizan Silu. Nuptial. lib. 9. verbo non eſt nubendum, num. 93. & ſeqq. Gomez. ad leg. Tauri 80. numer. 51. verſ. unum tamen eſt, Decian. tract. Crimin. lib. 9. cap. 15. nu. 38. Menoch. de Arbitr. caſ. 356. numer. 89. Follet. pract. Crim. verb. dentur Capitula, quod ſuffocauit uxorem, num. 63. fol. 280. Farinacc. queſt. 121. num. 59. & 60.* latiſsimè *Caball. Reſol. Crimin. caſ 300. num. 5. & pluribus ſeqq. Matthæù de re Crimin. controu. 11 num. 8. Dondè Conſult. 97. num. 1. & 2. Sanfelic. deciſ. 337. num. 9. dexart.* plures alios allegans *deciſione Sardin. 57. per tot.*

Quamquàm adhoc, vt mitigationi dictæ Pœnæ locus eſſet, neceſſe quidem non haberemus, quod Adulterium vxoris fuiſſet, proùt eſt, concludentèr probatum; ſufficeret enim, quod verſaremur in ſimplici ſuſpicione *gloſſin l. Divus Adrianus in figuratione Caſus*, ibi- qui filium occidit, quem cum Nouerca iacere credebat, & erat fortè verum, deportatur in Inſulam. *ff. ad leg. Pompeiam de Parricid. Innoc. in cap. ſi verò ſub num. 1. verſ. nec laicus dubitaret, & verſ. vel ipſe laicus de hoc probabiliter dubitaret de ſent. excomm. Aretin. conſil. 85. num. 55. Grammatic. conſ. 18. num. 5. & conſ. 29. num. 2. Farinacc. conſ. 35. num. 22. idem Grammatic. deciſ. 5. num. 10.* Vbi de eo, qui ſe iactauerat velle carnalitèr cognoſcere ſororem occidentis, quod iuſtam ſuſpicionem, & Timorem amiſsionis honoris dicitur incuſsiſſe ad euitandam Pœnam ordinariam homicidii, optimè *Donde. dicta conſult. 97. num. 5.*

Nec verum eſt, id, quod aliqui Doctores affirmant, quod neceſſarium ſit, quod Maritus vxorem deprehendat in Adulterio, illamque incontinenti occidat, in quibus Terminis inquiunt loqui ſupradictas leges, ſecùs autèm ſi ex Interuallo, vt per Doctores allegatos *per Farinacc.* qui illos ſequi videtur *dicta queſt.*

quæſt. 121. *à num.* 111. *vſque ad* 118. *& conſ.* 141. *per tot. vol.* 2. Contraria enim opinio eſt verior, communior, & in praxi tenenda, vt benè conſuluit *Marſil. conſ.* 105. *num.* 31. *& ſeqq.* vbi pro defenſione cuiuſdam Nobilis, qui ex Interuallo occiderat alium, qui ſe deſponſauerat per verba de futuro cùm eius ſorore, illamque tenuerat per tres menſes, & deindè refutauerat, propter quod magna fuerat irrogata Iniuria, & Ignominia eius familiæ, & toti Cognationi, adducit ſupradictas leges loquentes de Marito occidente Vxorem ſuam Adulteram, *Bertazzol. dicto conſ.* 42. *num.* 8. *& ſeqq. vſque in finem*, vbi ponit Caſum in eo, qui vxorem Adulteram interfecerat, & poſteà ad ſui defenſionem probauerat Adulterium ex gemi, nata eiuſdem Vxoris Confeſſione; & *Claudius filius in Addit.* teſtatur dictus Occiſorem fuiſſe à Prætore Mirandulæ Bannitum ad tempus, & poſteà lapſis aliquibus menſibus à Domino Duce Mirandulæ reuocatum, *Io. Franc. de Ponte conſ.* 98. *nu.* 27. *& ſeqq. Vol.* 1. *repetit. ſubius dec. Sanfel.* 337. *ſub nu.* 87. *& ſeqq. Afflict. ſuper Conſt. Reg. d. lib.* 3. *Rubr.* 46 *ſub n.* 1. vbi relata Conſtitutione Regni - *Si Maritus* - concedente impunitatem Marito occidenti Vxorem, & adulteram dummodò ambos in ipſo actu adulterij, & ſine vlla mora occidat, inquit, quod ſi non cõcurrant huiſmodi requiſita, Maritus excuſatur à tãto, non autem à toto, & ſic mitius punitur, *& num.* 2. rationem reddit, quia vbicumque quis iuſto dolore motus commiſit delictum, pœna debet aliquantulum tẽperari, iuxta *pradictum Textum in l. ſi quis in graui* §. *ſi quis moriens, verſ. maritus ff. ad Sen. Conſ. Syllanian.* & àlios, quos ibidem allegat, ſequitur *Carer. pract. Crim.* §. 9. *excuſatur maritus nu.* 10. *fol.* 170. *Caball. d. ref.* 300. *num.* 24. *& duob. ſeqq.* vbi: *ac num.* 26. teſtatur ita vidiſſe obſeruari in facti contingentia, *Cabrer. de metu lib.* 2. *cap.* 45. *num.* 13. *verſ. quæ quidem ſententia Bellon. de poteſt. eor. quæ fiunt in continenti cap.* 20. *num.* 6. vbi quod ita ſtatutum fuit per Senatum Mediolani *Matth. de re Crim. controu.* 12. *à num.* 7. *vſque ad* 17. *& num.* 21. vbi quod ita obſeruant eũcta ferè tribunalia Mundi, *& numeris ſeqq. vſque in finem, & de Regimin. Reg. Valent. cap.* 8. §. 8. *num.* 65. vbi quod ita fuit iudicatum per Regium Senatum, *& num ſeqq. vſque ad* 70. vbi *ſub num.* 69. adducit pulcra verba Theodorici apud *Caſſiodor. lib.* 1. *variar. epiſtol.* 37. ibi - *Quis enim ferat hominem ad leges trahere, qui matrimony niſus*

eſt Iura violare? Feris inſitum eſt copulam ſuam extrema con-certatione defēdere, dum omnibus eſt animātibus inimicum, quod naturali lege damnatur; Vidimus Tauros fœminas ſuas cornuali concertatione defēdere, Arietes proſuis onibus capitaliter inſœuire equos adiunctas ſibi fœminas Colaphis, ac morſibus vindicare, ita pro copulatis ſibi animas ponunt, qui verecundia non mouentur. Homo autem quemadmodum patiatur adulterium inultum relinquere, quod ad æternum ſuum dedecus cognoſcitur commiſiſſe? & ideò ſi oblatæ petitionis minimè veritate fraudaris, & genialis Thori maculam deprehenſi adulterij ſanguine diluiſti, nec ſub prætextu Cruentæ mentis, ſed cauſa pudoris intendis ab exilio, quod tibi conſtat inflictum, te præcipimus alienum, quoniam pro amore pudicitiæ porrigere ferrum maritis non eſt leges calcare, ſed condere - Nouar. in Summ. Bullar. par. 1. Comment. 72. ſub num. 81. verſ. ex quo adulterio, Baldaxar de Angelis in addit. ad Gizzarel. deciſ. 18. num. 5. Carol. Anton. de Luc. in addit. ad Defranch. deciſ. 678. num. 8. ad fin. verſ. maritus, vel pater Donde. d. conſult. 97. à num 10. vſque in finem vbi *in verſ. & hæc meâ interpretatio,* ; inquit, quod iſta interpretatio manifeſtè probatur authoritate *à Gloſs. in cap. ex litterarum 4. de eo, qui dux. in matrim. quam polluit per adulterium*, cum enim in Textu dicantur illa verba vxorem tuam in adulterio deprehenſam Gloſ. *in V deprehenſam*, explicat, ideſt conuictam, *Mart. vot. ſeù deciſ. 206. per totam* vbi *num. 4.* quod iſta opinio eſt multum iusta, æqua, & communiter tenta, *Manta dec. Sicilia 61. num.* 11. *&* 12. & in Calce ponit reſolut. Magnæ Curiæ d. Regni, per quam maritus fuit damnatus ad triremes per ſeptennium, idque attenta circumſtantia, quod vocari fecerat Vxorem per filium, extra mœnia Ciuitatis, ibiq; illam interfecerat, & eius Cadauer poſteà repertum fuerat, comedi à canibus *Dexar. deciſ. Sardin. 5. per totam*, vbi in fine teſtatu rſic fuiſſe deciſum in Sacro Regio Prætorio, condemnando maritum dumtaxat in exilium, *Sanſelic. deciſ. 337. num. 12. & 13.* vbi quod imò concurrente Qualitate Perſonæ fuerunt à Regio Conſilio Neapolis abſoluti quidam nobiles Iuuenes, qui occiderunt vxores ex interuallo, & ex vehementi ſuſpicione Adulterij, ad quorum fauorem ſcripſerunt doctores primæ claſſis, quorum allegationes idem Author ponit ſubtùs dictam ſuam deciſionem, & quamuis aliqui ipſorum fuerint damnati ad remigandum, inquid, quod

hoc

noc proceſſit ex cauſa abſciſſionis genitalium de facto ſecutæ, quia nempè id facientes reputantur inimici naturæ, latiſſimè *Panimoll. deciſ. 86. n. 20. & pluribus ſeqq. Caldero deciſ 42. n. 16. & 17.* vbi quamuis ipſe in antecedentibus. n. n. in nobis contrariam inclinarent opinionem, viſo *Matthæu ſupra per nos allegato* cum illius opinione pertranſit.

Et ratio eſt euidentiſſima, quia huiuſmodi iniuria recepta per viros ingenuos, præſertim nobiles, eiſdem ſemper eſt præſens, ſemperque cor premit, & vrget ad vlciſcendum ob amiſſum honorem recuperandũ, vt benè animaduerſit *Giurb. d. conſ. 86. num. 19. Bellon. de poteſt eorum, quæ fiunt incontin. dicto cap. 20. num. 6. Carol. Ant. de Luca in addit. ad Franch. dicta deciſ. 678. num. 8. ad finem, verſ. maritus, vel Pater, Sanfelic. d. deciſ. 337. ſeu melius in prima allegat. ſubtus dictam deciſ. num. 50. Panimoll. d. dec. 86. num. 21. & ſeqq.*

Quemadmodum ſemper, & vbicumque agitur de homicidio commiſso ex cauſa honoris non eſse locum pœnæ ordinariæ, ſed eam arbitrio Iudicis mitigandam, etiam, quod illud ſequutum fuerit ex interuallo, & poſt multum tempus ex ſupradicta ratione firmant, & deciſum referunt *Grammatic. deciſ. 5. & 23. Gizzarell. deciſ. 18. num. 4.* vbi quod ità ſemper fuit Iudicatum per Sacrum Conſilium Neapolitanum, & quod hæc opinio ſemper fuit à maioribus noſtris recepta *& num. 5. ibique Baldax. de Angel. num. 1. & ſeqq. Prat. reſponſ. crim. 25. num. 15. in fin. Adden. ad Paſcal. de virib. Patr. poteſt. par. 3. cap. 6. §. congruit pag. 343. Vermigl. conſ. 37. num. 11. Rot. Genuen. vot. 12. ſub num. 5. verſ. & eſt adeò prinilegiata, poſt Cenſal. ad leg. vn. Codic. ſi quis Imperat. maledix. Campan. reſolut. 16. nu. 5.* vbi quod ità fuit Iudicatum per Magnam Curiam Vicariæ quamuis ageretur de homicidio poſt biennium, & proditoriè commiſso à duobus fratribus in perſonam Adulteræ eorum Sororis Conſobrinæ, *Cyriac. controuerſ. 104. num. 73.* vbi de homicidio commiſso per vxorem in perſonam mariti ex cauſa, quod retinebat Concubinam, & eius Honori inſidiabatur, & dicit, quod iuſtus dolor cum habeat tractum ſucceſsiuum ratione vltimi doloris, vltio ſemperdici debet ſequuta incontinenti, *Polic. de Reg. Audien. tom. 2. tit. 10. cap. 7. nu. 30.*

Suppetit quoque alia ratio à Doctoribus conſiderata, quia ſcilicet iniuria, per quam honor læditur, non eſt Perſonalis, ſed realis, quæ propterea propulſari poteſt quãdocumque etiam

poſt lapſum longiſsimi temporis, vt in noſtris termiuis *Giurb. d.conſ.86.num.20.& 21.Io.Franciſc.de Pont.dicto conſ.98.num. 29 & ſeq.lib.1.repetit.ſubtus d.deciſ Sanfelic. 337. ſub num.87. verſ.nam cum fiat,& n.ſeq. Cabrer.de met. d.lib.2.cap.45.verſ. pungit pro hac ſententia, Marta d.vot,ſeù deciſ.206.num.10.Panimoll.d.deciſ.86.num.27,& ſeqq.*

Cum igitur habeamus tot Claſsicos doctores viuiſsimis rationibus firmantes homicidium commiſsum etiam ex interuallo in Perſonam vxoris, & alterius cuiuſcumque Perſonæ ex cauſa honoris non eſse puniendum pœna ordinaria, ſed mitiori, & vlteriùs dicti Doctores teſtentur ſic fuiſse iudicatum in Tribunalibus, in quibus ipſi verſati fuerunt; nil profectò curandum eſt de contraria opinione *Farinacc.d. queſt.121.& d.conſ.141.* quià euidenter dignoſcimus ipſum loqui contrà communem, & in Tribunalibus magis receptam opinionem *Valenzuel.conſ.139.num.25.& 26.Rot.recent.deciſ.464.num.8. part.5.tom.2.*

Vlteriùs animaduertendo, quod *idem Author in conſ.66. num.5.* contrarium tenet, præſertim ſe fundans in diſpoſitione *Textus in leg.Diuus Adrianus ff.ad leg.Pomp. de Parricid* vbi Pater occidens filium non repertum in actu venereo cum nouerca, ſed in venatione, & in Siluis,& ſic interuallo non mortis,ſed deportationis pœna punitur,cuius Textus diſpoſitionem pariter pro Corroboratione huius noſtræ opinionis adducunt plærique ex præcitatis Doctoribus, conſiderando etiam quod *idem Author in dicta queſt.121.* dubius hæſit, *vt in num. 118.* vbi fatetur, quod pro hac noſtra opinione multum ſtringit ſuprà relata ratio, quod cauſa honoris, & iuſtus dolor ſemper cor premit, ideoque ait in contingentia facti ſeruari debere diſpoſitionem *Textus in leg.non puto ff. de Iure Fiſci* vbi Modeſtinus Iuris Conſultus inquit ſe non putare delinquere eum, qui in dubijs quæſtionibus contra Fiſcum Facilè reſponderit, *& Farin.* ſic dicentem refert, & ſequitur in his terminis *D.Raynal.parte 2.cap.2.§.4.num.156.*

Cauendum autem eſt ab eo, quod aſſerit idem *Farinacc.d. conſ. 141.in fine*, quod ſcilicet ſua opinio fuiſset, vt ipſe percipere potuit magis approbata à Sacra Conſulta, quia cum, vt ipſemet fatetur, dubitatio tunc non fuerit propoſita, ipſe non poterat diuinare quid euenturum fuiſset ſi propoſita fuiſset, & reuera ſapientiſsimi PP.dicti ſupremi conſeſsus cum illius opi-

opinione non tranſeunt, ſed contrariam nobis fauorabilem ſeruant, vt ex reſolutionibus, quæ emanant in dies; ita enim ſeruatum fuit die vigeſima quinta Martij 1672. cum Carolo Falerno qui damnatus fuit in extraordinariâ pro homicidio patrato in perſonam Franciſci Dominici; quem inuenit egredientem ex Eccleſia, ad quam ne accederet præmonuerat ſuſpicatus, quod Vxorem ad ſectaretur, ſimili modo cum Carolo Matarazzo ſub die 15. Auguſti 1673. qui vxorem interfecit ex ea ruſticana ſuſpicione, quod *Pattus* ſupputata ratione menſium ſuæ abſentiæ eſſet ſuſpectus de non legitimitate, cùm tamen ea ſuſpicio in facto non adeò veritati reſponderet, & in Iure ſit res prorsùs fallax, & humano intellectui imperuia ad *text. in l. 1. §. 14. ff. de agnoſc. & alend. lib. & ibi ſcribentes*, & optimè ratiocinatur *Rot. in Auenionen. dotationis 3. Martij 1692. § ſed cum hodiè coram R.P.D. meo Caprara*,

Sicuti etiam in homicidio ex inſidijs, cùm Archibuſiata commiſſo in perſonam Thomæ Bouini a Franciſco Mattuccio de monte S. Ioannis perſona viliſſima ex Cauſa ſimpliciter tentatæ pudicitiæ eius ſororis, de quo conſtabat per duos Teſtes de auditu ab ipſo occiſo die 4. Septembris 1692. pænam triremium perpetuarum, in quam ſub die 12. Iulij antecedentis dictus Mattucciùs ex indicijs vrgentiſſimis condemnatus fuerat moderata eſt Sac. Conſulta Ponente bo. mem. R. P. D. Ratta.

Iure itaque meritò *idem Farinacc.* ex profeſſo confutatur, & reijcitur à *Matth. de Re Crimin. d. reſol. 12. num. 22. & à Dexart. d. dec. 5. præſertim num. 16.*

Et hæc noſtra opinio eò facilius recipienda venit, ponderando, quod maritus indignatur plùs de adulterio Vxoris, quàm ſi filius occidatur plenè *Io: Lopez in Rubr. de donat. inter virum, & Vxor. §. 78. num. 3. cùm ſeq. Boſſ. de Coit. damn. & punibil. num. 46. Cabal. reſol. crimin. caſ. 15. num. 9. & dict. caſ. 300. num. 10. Nouar. in Summ. Bullar. dicta par. 1 commentar. 72. ſub num. 81. Mut. d. dec. 61. num. 1.* quinimò, & magis, quàm ſi ſtropetur filia, *Nevizan. Silu. nuptial. li. 1. verb. non eſt nubendum num. 30. Paſchal. de vir. patr. poteſt par. 1. cap. 5. num. 34. verſ. & de hoc Crimine, Nouar. d. commentar. 72. ſub d. num. 81.* adeò, quod ſi maritus de adulterio Vxoris non conqueratur, præſumitur Leno, vt proſequitur *Paſcal. vbi*

proximè; Adulterium ſiquidem Vxoris offendit non ſolùm maritum, ſed totam cognationem denigrat, & maculat, vt inquit *Roman. conſ.*451. *num.*10. *Boſſ. d. tit. de coit. damn. & punibil. n.*44. *Nouar. d.Commentar* 72. *ſub d. n.*81. quod contigiſſe in præſenti caſu manibus palpatum eſt; Dominus enim Abbas Paulus frater D. Guidonis coactus fuit non ſolùm vrbem deſerere, in qua ſumma cùm laude vixerat per multos annos, ſed tranſgredi Italiam, quià nimirum per huiuſmodi adulterium ſummum Dedecus conſequutus fuerat, adeò, vt cùm Iudicialitèr proſequeretur illius Cauſam ipſi accidit, quod mouerit riſum, & cachinnos ferè in omnibus etiam ſenſatis, & cordatis viris; non tamen dicam in ipſismet Iudicibus, quemadmodùm in his etiam contingere conſueuit *Teſte Caſtr. conſ.* 277. *ſub numero 3. verſ. ſed nec Iudices lib.*2. ſequitur *Neuizan. Sylu. nuptial. lib.*1. *verb. non eſt nubendum ſub num.*94. *Cabal. dict. caſ.*300. *num.*17. *Matth. dicta contr.* 12 *num.*25. *Boer. dec.*298. *num.*1. *Calderò d. dec.*42. *num.*6.

Prædictis nullatenùs obſtaret, ſi, citrà veri præiudicium, admitteremus (proùt Fiſcus prætendit) quod idem D. Guido Vxorem occidiſſet cùm Complicitate, & auxilio prædictorum Blaſij, Dominici, Franciſci, & Alexandri adhuc effectum coadunatorum, quià id ei facere licuiſſet, vt commodius, & tutiùs de illa vindictam ſumeret *Bald. in cap. vltim. num.*6. *circa finem, de Iuram. Calumniæ, Caſtrenſ. in leg. Refectionis num.* 4. *Cod. Comm. Prædior. Iaſ. in leg.* 1. §. *Vſufructarius, num.*5. *verſ. ſecundò notabiliter limita ff. de oper. nou. nunciat. Caſtrenſ. conſ.*277. *num.*3. *lib.*2. *Cepoll. conſ. Crimin.*4. *num.*13. *verſ. ſecundò ſimiliter, & num.*14., & 15. vbi refert id fuiſſe Iudicatum per totam Curiam Veronæ, *& num.* 16. *& ſeq.* vbi quod iſta eſt veritas, *& conſ.*73. *num.*11., *& de ſeruit. Vrban. prædior cap.*23. *num.*11., vbi paritèr, quod ità fuit iudicatum, & quod hoc eſt menti tenendum, *Rolan. conſ.* 34. *num.* 8. *& ſequentibus, vſque ad* 18. *lib.* 2. *Soccin. iun. conſ.*34. *num.*12. *& ſeq. vol.*2. *Pariſ. conſ.* 154. *num.*7. *vol.*4. *Io: Franc. de Pont. conſ.* 98. *num.*31., *& ſeqq. lib.*1. quod eſt repetitum in Calce *dictæ deciſionis Sanfelic.*337. *num.*89., *& ſeq. Marſil. ſingular.* 175. *per tot. Io: de Arnon. ſingular.*85. *pariter per tot. Caſſan. ad Conſuet. Burg. Rub.*5. §. 1. *tit. deſrentes n.*43. *pag. mihi* 815. *Neuizan. Sylu. nuptial. lib.*1. *ver. non eſt nubendũ n.*98. *Gomez ad leg. Tauri* 80. *num.*62. *Caball. reſol. criminal. d. caſ.*300. *num.*58. *cum ſeq. & num.*75. *Mart. vot. ſeu deciſ.*206. *num.*9. *Garz. deciſ.*71. *per tot.*

Et

Et quidèm etiam quod prædictos homines conduxiſſet mediante pecunia, *Bald. in leg. Gracchus ſub num. 5. Afflict. ſuper conſtit. Regni lib. 1. rubric. 8. num. 30. & lib. 3. rubric. 46. num. 3. & 4.* & vtrobique teſtatur ſe ita practicari vidiſſe, *Carer. practic. criminal. in 3. tract. de homicid., & aſſaſſin. §. 8. excuſatur Pater num. 13. fol. 169., & §. 9 excuſatur Maritus num. 11. fol. 170. a tergo Mart. dicto vot. ſeu deciſ. 206. eod. num. 9.* cum alijs allegatis infrà §. *Et in fortioribus*.

Non autèm Cauſa honoris ceſſat reſpectu homicidiorum dictorum Soceri, & ſocrus, ſtante enim conſpiratione habita in Adulterio per filiam commiſſo, ipſi fuerunt in Cauſa iniuriæ, & ignominiæ, quæ ex eo reſultarunt in perniciem honoris, & exiſtimationis Domini Guidonis Generi, & reſpectiuè Mariti, propterea ſicuti ipſi de iure puniri debuiſſent eadem pæna qua Principalis iuxtà Textus expreſſos in *leg. Qui domum, vbi Gloſſ. & in leg. Et ſi Amicis, cùm leg. Sequenti ff. ad leg. Iul. de Adulter. & in leg. 1. §. Fin. ff. de extraordinar. Crimin. Natt. conſ. 151. per tot. vol. 1., Paſcal. de vir. Patr. poteſt. part. 2. cap. 10. numero 20.* Ità, & ſufficientem Cauſam dederunt eidem Domino Guidoni de illis vlciſcendi.

Addito inſuper, quod, vt in facto probabitur, & aſſeruit in ſuis Conſtitutis ipſemet D. Guido, ipſi aliud præiudicium intulerunt exiſtimationi eiuſdem mediante lite Ciuili per ipſos intentata ſuppoſitionis partus dictæ Franciſcæ Pompiliæ, euulgando etiam, & diſtribuendo non ſolùm hic in Vrbe, ſed etiàm in Patria ipſius mordaciſſimas ſcripturas confectas, quin etiàm impreſſas ſuper eadem lite, ità, vt negari non poſſit, quin Dominus Guido ex hoc etiam iuſtum dolorem, & Prouocationẽ conceperit, & iuſtam Cauſam habuerit ſumendi vindictam ad Textum in *cap. 1. de ijs, qui fil. occid.* vbi Alexander Tertius reſcripſit Epiſcopo Tornacenſi, quod mulierem, quæ filium interfecerat eo, quod ſibi à Marito exprobaretur illum eſſe conceptum ex Adulterio, detruderet in Monaſterium. In delictis enim, in quibus etiam Iracundia non excuſat, adhuc delinquens in iracundia, quæ ortum habuit ex iuſto dolore venit aliqualiter excuſandus, vt ex prædicto Textu notat ibidem *Gonzal. num. 2.* & firmat *Menoch. de Arbitr. caſ. 356. num. 59.*

Abſque eo, quod ex his Fiſcus prætendere poſſit incurſum pœnæ in Alexandrina conſtitutione appoſitæ, quià delictum in præ-

præsenti non potest dici commissum in odium litis, in qua. D. Guido sententiam fauorabilem ab A. C. Thomaso reportauerat, canonizatam etiam a supremo Tribunali signaturæ iustitiæ, sed potius ex iusto dolore proueniente ex dicta Ignominia eidem resultante ex dicta Partus suppositione, atque ex prouocatione ab eisdemmet occisis facta mediante dicta euulgatione, & distributione scripturarum, & conspiratione prædicta ad fugam eius Vxoris; cùm scilicèt dicta constitutio non intret, vbi dolus non interuenit, sed ex Parte offensi aliqua præcessit prouocatio, vt latissimè firmat *Farinacc. conf. 67. per tot.* vbi in calce ponit per extensum decisionem Sacræ Rotæ.

Et in omnem casum, cùm in D. Guidone duæ concurrerent Causæ ad delinquendum; Altera scilicèt prædictæ litis, & Altera honoris læsi ob dictam litem intentatam, & conspiratam fugam, ex quo adulterium processit, attendenda est illa honoris, quæ est grauior, & consequenter etiàm magis proportionata delicto *Honded. conf.* 105. *num.* 60. *lib.* 1. *vermigl. conf.* 79. *n.* 15. *Rot. Genuen. vot.* 11. *n.* 5. *&* 6. *post Censal. ad l. vnic. C. si quis Imper. maledixer.* optimè in his terminis *Matth. de re crimin. contr.* 11. *num.* 79.

Similitèr nec aggrauari debet pœna respectu loci, quià honoris defensio est adeò iusta, adeoque est Iusta Ira, animique motus ex ea prouenientes, vt de eo non sit habenda ratio, vt ex *Ioanne Francisc. del Carrillo decis.* 271. *nu.* 51 *&* 55. loquente de Insultu facto in Carcere tenet *Merlin. Pignatel. controuer. for. cap.* 66. *num.* 27. *&* 28. vbi *num.* 29. Conclusionem comprobat ex eo, quod maior Reuerentia Ecclesiis, & alijs locis, Deo consecratis, & in quibus Rex Regum, & dominus dominantium assistit per essentiam, & nihilominùs delinquens in eis ex iusta Ira, & dolore excusatur, asserens ità vno ore fateri Canonistas omnes *in cap. fin. de Immunit. Eccles.* & alios per eum ibi allegatos.

Facilius igitur Conclusio procedere debet in Casu nostro, vbi D. Franciscæ non existebat in Carceribus formalibus, sed habebat domum pro Carcere sub fideiussione scutorum Tricentorum de non discedendo, qui enim dedit fideiussores, & Iurauit de non recedendo nec in vinculis, nec in Custodia est *L. prima ff. de Custod. Reor. Angel. in l. qui in Carcerem num.* 2. *ff.*

quod

quod met. Cauſ. Luc. de Pen. in l. ſi quis Decurio, num. 6. Cod. de Decurion. lib. 10. Vbi quod ſint diuerſa inter ſe in vinculis cuſtodiri, & fideiuſſoribus committi *Grammat. conſ.* 51. *num.* 8. *&* 9. *Farinacc. quæſt.* 30. *numer.* 58. vbi quod verbum Cuſtodiæ magis ſtrictè intelligendum eſt, quàm verbum vinculorum per *Textum in l. Succurritur in fine*, ibi -- *Cuſtodiam autèm ſolùm publicam accipi Labeo putat* -- Et ibi-- *gloſſ. in verbo putat. ff. ex quibus Cauſ. maiores &c. Cyrill. in Summ. Crimin. Rubr.* 12. *de Cuſtod. Reor.* §. 1. *num.* 1. *verſ. Vinculorum ergò appellatio latius accipitur.*

Si igitur D. Guido, quatenùs etiàm confeſſus fuiſſet ſe cùm complicitate, & Auxilio prædictorum occidiſſe propriam Vxorem, ſocerum, & ſocrum ex prædictis haud puniendus eſſet pœna ordinaria, multò faciliùs id aſſequi debemus attento, quod ipſe ſolummodò faſſus fuit dediſſe mandatum, vt Doctorum vtar verbis, ad sfriſiandum dictam ſuam Vxorem tantùm, non enim hoc caſu ipſe tenetur de morte ſecuta dictæ ſuæ Vxoris, & aliorum *Dec. conſ.* 622. *num.* 4. vbi quod mandans in iſto caſu, ſolùm puniri poteſt per modum culpæ, pro qua nec pœna corporalis imponi poteſt, *Grammatic conſ.* 20. *num.* 1. *&* 2. *vermigl. conſ.* 16. *per tot: ſignanter num.* 20. *Petr. a plaz. epitom. delictor. lib.* 1. *cap.* 15. *num.* 1. *verſ.* idem etiam dicendum ſi fieret mandatum ad sfriſandum, *Menoch. de Arbitr. caſ.* 352. *num.* 3. *&* 4. *Farinac. quæſt.* 135. *num.* 156.

Quatenùs verò ſilens huiuſmodi confeſſioni qualificatæ acquieſcere nolit, ſed dum inquiſitum torquere prætendat probabenda vlteriori prætenſa veritate, in tali caſu Tortura erit ſimplex, non enim agi poteſt de tormento vigiliæ, quià obſtat conſtitutio ſa. m. Pauli V. edita ſuper reformatione Tribunalium vrbis; quæ habetur inter alias conſtitutiones eiuſdem in ordine *la* 71. *Tit. de Iudic. Criminalib. qui eſt* §. 10. *n.* 30. *tom.* 3. *Bullar. pag.* 198. per quam ſancitum fuit huiuſmodi tormentum inferri non poſſe, niſi copulatiuè concurrant illa duo, videlicèt quod delictum ſit atrociſſimum, quodq; Reus ſit grauatus indicijs vrgentiſſimis, & teſtantur *Spad. conſ.* 114. *n.* 4. *lib.* 1. *Farinacc. qu.* 38. *num.* 71. *Locatel. qq. Iudic. crimin. inſpect.* 1. *num.* 44. *Guazzin. def.* 30. *cap.* 21. *num.* 13. *verſ. & hic, Euſebius* laudatiſſimæ memoriæ deceſſor meus in *ſua alleg. impreſſa apud Paſſeriu. in cap.* 1. *ſub n.* 70. *in principio, de homicid. in* 6.

Deli-

Delictum autem atrociſſimum dicitur dumtaxat illud, pro quo pœna grauior, quà ſimplicis mortis imponenda venit, veluti ſciſſionis in fruſta, combuſtionis, & ſimilium, *Farinac. qu.* 18. *num.* 68. *Carpzon. practi. crimin. par.* 3. *qu.* 102. *num.* 62. *Scanarol. de viſit Carcer. lib.* 2. §. 6. *cap.* 4. *num.* 14. *pag.* 291. *Campan. reſol.* 2. *num.* 28. *Polic. de Reg. audien. tom.* 1. *tit.* 3. *cap.* 2. *num.* 62. *D. Rainald. obſerv. par.* 3. *cap.* 84. §. 6. *num.* 4 Quod mortis Genus, vti Ignominioſum, & Irrogans Infamiam ſignanter non habet locum in Perſonis nobilibus, *leg. moris eſt* 9. §. *ſed enim ff. de Pen. Gloſſ. in l. deſertorem* 3. §. *torquentur, ibique Bartol. ff. de Re milit. Idem Bartol. in l. capitalium* §. *ſerui cæſi ff. de Pœn. Caſſan. in Catal Glor. mundi par.* 8. *conſider.* 33. *verſ. hinc etiam eſt Farin. quæſt.* 98. *num.* 98. *Couarr. variar. lib.* 2. *cap.* 9. *num.* 4. multò igitur minùs, quod non agitur hic de Pœna mortis, quæ in præſenti non intrat ex ſuperiùs firmatis, & in puncto ad effectum, vt huiuſmodi delictum non dicatur qualificatum aduertit *Gabriel. conſ.* 187. *num.* 12. *&* 13. *lib.* 2.

Quæ dicta ſunt fauore D. Guidonis Principalis militant etiam fauore, prædictorum Blaſij, Dominici, Franciſci, & Alexandri, quia nec ipſi puniri poſſunt pœna ordinaria, ſed ea dumtaxat, qua dictus Principalis *Bald. in l. Græcus, num.* 5. *Cod. ad leg. Iul. de Adulter.* vbi ponit Caſum de ſtatuto præcipiente, quod Bannitus pro certo Crimine non poſſit occidi niſi ab Inimico, qui fecit eum banniri, & dicit quod ſi Inimicus fecerit eum aſſaſſinari, Aſſaſſinus non punitur, & Rationem reddit, quià quod fuit licitum in Perſona mandantis, reputatur licitum in Perſona mandatarii, & dicit eſſe Casũ expreſſum in d. lege, *Caſtrenſ. in l. Refectionis n* 4. *Cod. Commun. Prædior.*, vbi quod ſi ex forma ſtatuto licitum eſt alicui ſumere vindictam de eo, qui ipſum offendit, licitum eſt etiam congregare Amicos, qui ipſum iuuent ad hoc, & quod illi non puniuntur, ſicut nec ipſe Principalis; & dicit hoc idem tenuiſſe *Iacob. Butrigar. & in l. raptores num.* 6. *verſ. Sed quid ſi permittit C. de Epiſc. & Cleric.* vbi in eiſdem terminis, & *conſ.* 277. *ſub nu.* 3. *verſ. Ideò parcendum fuit eis*, vbi in terminis mariti, qui coadunauerat homines ad baſtonandum eum, qui cùm vellet offendere pudicitiam ſuæ Vxoris iniunxit eidem Vxori, vt fingeret ſe præbere aures, & cùm veniſſet, fuit com.

commiſſum homicidium, & dicit, quod Hominibus talitèr coadunatis parcendum fuit, quià huiuſmodi coadunatio fuerat licita Marito Principali *Vol.2.Iaſon.in leg.1.§.vſufructuarius num.5 præſertim in ſecunda limitat.ff.d. nou.oper. nonciat.* vbi quod quãuis vindicta, quæ à ſtatuto permittitur, non poſſit alteri demandari, tamen is, cui illa permittitur, poteſt ſecùm adhibere Socios, & Complices ad iſtum actum, qui ſi ſimul cùm eo occidant, non tenebuntur de occiſo, nec de Auxilio præſtito, & dicit, quod iſta ſua opinio eſt multum Cordi tenenda *Cæpoll.conſ.Crimin.4.num.13. verſ.2. ſimiliter, & num.ſeqq.* & exemplificat in pluribus caſibus ſignanter in illo de hominibus occidentibus conuerſantem cum Sorore eius, qui illos coadunauerat, & dicit, quod non debuerant puniri, ſicuti, nec ipſe prineipalis, & quod ita obtinuit iudicati, & hoc idem repetit *conſ.73.num. 11.& de ſeruit.Vrban.prædior.cap.23.num.11. Roland. conſil. 34. numer. 8. & ſeqq. vſque ad 18. lib. 2.Soccin.Iun.conſ.34.num.13.& 14.volum.2.* vbi niſi fortè quis velit dicere, quod puniri debeant minorè pœna, quàm principalis prout ſæpè contingit in auxiliatoribur, & loquitur in his noſtris terminis hominum a Marito coadunatorum ad effectum occidendi aduiterum Vxoris ſuæ, in quibus etiàm terminis conſuluit *Pariſ conſ.154.num.20.& ſeqq.vol.4.Carer.in pract.Crimin.in tract.3.de homicid.& aſſaſſ. §.8.excuſatur patèr num.13.* vbi de Patre, qui per aſſaſsinium fecerat occidi filiam turpitèr conuerſantem, & dicit quod nec Pater nec occidens tenetur ſol. *169. & §.9. excuſatur Maritus num.11.* vbi hoc idem tenet, in terminis Mariti, eiuſque Mandatarij *fol.170.à tergo* ſequitur *Mart.vot, ſeù deciſion. 206.num.9.Marſil ſingul.175.per tot.* Vbi poſita in principio concluſione, quod conceſſo vno omnia videntur eſſe conceſſa, per quæ deuenitur ad illud, ex illa infert ad præſentem Caſum, & plures adducit rationes *Caſſan.ad conſuetud.Burgund. rubric.5.§.primo tit.Des rentes, num.43.pag.mihi 815.* vbi quod homines talitèr coadunati, ſi ſimul occidant cùm principali, non tenentur de occiſo, nec de auxilio præſtito, & in eiſdem terminis *Garz.deciſ.71.per tot.*

Idque non obſtante quod aliquis prædictorum proprijs manibus vulneraſſet, vel etiam occidiſſet aliquem ex prædictis, prout Franciſcus faſſus fuit ſe quatuor, aut quinq; vulneribus affeciſſe

ciſſe d.Franciſcam Pompiliam in dorſo: Quia in his etiam terminis militat regula de non puniendo auxiliatores, ſeù præſtantes opem maiori pœna, quàm principalem; Sicuti in individuo firmât ex proximè allegatis *Caſtrèn. in d.leg. Raptores num. 6. C de Epiſc. & Cleric. & dicto conſ. 277. ſub d. num. 3. vol 2. Iaſon. in dicta l. 1. §. vſufructuarius num. 5. in 2. limit. ff. de nou. oper. nunciat. Chaſſan. ad conſuetud. Burgund. rubr. 5. §. 1. tit. des Rentes num. 43. pag. 815.* & ità iudicatum fuiſſe teſtatur, *Garz. d. deciſ. 71.* ibi -- *An liceat ſecum adhibere Socios ad hunc actùm, qui ſi ſimul cùm eo occidunt adulteros minimè teneantur, nec de occiſo nec de auxilio, & fuit iudicatum, quod ſic.*

Et in fortioribus terminis occidentis per aſſaſſinium, & ſic abſente etiàm principali fuit originalis opinio *Bald: in l. Gracchus num. 5. ſignanter* ibi -- *modo quæritur nunquid Aſſaſſinius puniatur, & die quod non, quia illud, quod fuit licitum in perſona mandantis fuit licitum in Perſona mandatarij -- Cod- ad leg. Iul. de adult. Caſtren. in d. leg. Refectionis num. 4.* ibi -- *Quia, quod poſſum facere per me, poſſum facere per miniſtros meos ad hoc neceſſarios, Afflict. ſuper conſtit. Regn. lib. 1. rubr. 8. num. 30.* ibi -- *tàm per ſe, quàm per alium etiam cum pecunia, & ſic per aſſaſſinium dicit Bald. ibidem, quod idem, quia quod licitum eſt in Perſona mandantis eſt licitum in Perſona mandatary.* & teſtaturita fuiſſe iudicatum, *& lib. 3 rub. 46. n. 3.* vbi paritèr quod ità iudicatum fuit, *& numero 4. Carer. pract. crimin. in 3. tract. de homicid. & aſſ. §. 8. excuſatur Pater num. 13. fol. 169. & §. Nono excuſatur maritus num. 11. fol. 170. à tergo Monticell. eodem tract. reg. 6. de mandatar. nn. 14. fol. 59. Neuizan. Silu. nuptial. lib. 1. vo: non eſt nubendum numero 98.* præſertim ibi -- *& hoc alij mandare -- Mart. dicto vot. ſeu deciſ. 206. num. 9.* ibi -- *& multò magis quia Doctores firmarunt maritum, qui præ timore Adulteram occidere nequit poſſe alteri demandare, vt illam propecunia etiam occidat, & neuter puniendus eſt.*

Quid quid in contrarium dicat *Caball. dicto caſ. 300. numero 73.* quia ipſe ſe fundat in authoritate *Caſtn. d. conſ. 177. lib. 2. & Rolan. d conſ. 34. num. 19. 31. & ſeq. vol. 2.* Verùm Caſtrenſis noſtræ ſententiæ fauet, vt videre eſt *num. 3.* Roland. verò non eſt attendendus, quia cùm alleget illud ſimile de ſtatuto permittente alicui ſumere vindictam, & dicat, quod cum huiuſmodi per-

permiſsio ſit perſonalis, propterea non poteſt egredi illius Perſonam eius opinio eſt expreſsè contrà doctrinam *Bald. Caſtren. Iaſon. & aliorum*, quos allegauimus ſupra §. *quæ dicta ſunt*, & cum hæc noſtra opinio ſit æquior, & mitior, eſt tenenda, vt in puncto reſoluit *Iaſ. in dicta l. 1. §. vſusfructuarius n. 5. verſus finem ff. de nou. oper. nunc.*

Neque verò huiuſmodi pœna exaſperari poteſt ob prætenſam delationem armorum prohibitorum, quia iſta confunditur cùm delicto *Bal. in l. aduerſus in fine, C. de furt., Iaſ. in l. quod dicitur num. 3. ff. de verb. oblig. Marſil. in l. ſi in rixa num. 15. ff. ad l. Corn. de Sicar. & conſ. 51. num. 51. verſ. cum ergo iſta portatio armorum, Cephal. conſ. 204. num. 42. & ſeq. vol. 2. Farin. quæſt. 108. num. 166. Guazzin. defenſ. 26. cap. 2. num. 18.* vbi etiamſi pro delatione armorum eſſet appoſita maior pœna; Adeo, quod vbi conſtat, quod delictum fuit commiſſum cum cauſa, & iuſto dolore, vt in præſenti, armorum delatio ſit impunibilis, vel ſaltem punienda non maiori pœna ea, quæ pro delicto venit apponenda, quemadmodum loquendo de armis à bannimentis reputatis proditorijs benè firmat *Police de Reg. aud. tom. 2. tom. 10. cap. 5. num. 11. pag. 25.*

Quæ eo facilius procedere debent reſpectu Dominici, & Franciſci, qui ſunt forenſes, & propterea non comprehenſi in quibuſcumque Conſtitutionibus Apoſtolicis, ſeù bannimentis delationem armorum ſub grauiſsimis pœnis prohibentibus *Farinacc. quæſt. 108. num. 17. Police vbi proximè numero 43. pag. 29.*

Præſertim cùm, & iſti ſint ætate minores, *vt in Proc. fol. 35. & 304.* reſpectiuè, quo pariter caſu non ligantur Conſtitutionibus & bannimentis Minoris abilitantibus in delictis ex defectu Poteſtatis Principis, ſeù Officialis illa condentis. *Farinacc. fragm. crim. par. 1. v. bannimenta n. 23. verſ. tertius eſt caſus Cauale. de brach. reg. part. 4. ſub numero 464. Surd. deciſione 197. num. 6.*

Et hæc ſunt, quæ in maxima temporis anguſtia pro meo munere colligere potui ad defenſam horum pauperum Carceratorum, nullatenus diffidens, quod Domini mei Iudices vbi noverint, quod minùs fuerit dictum, id ſupplere, & proferre velint, ex ſumma, qua pollent rectitudine, obtemperantes decreto Imperatorum Diocletiani, & Maximiani relato *in leg. uni-*

vnica C. *vt quæ desunt aduoc.* & sequentes monitum *Hippoliti Marsilij* Insignis criminalistæ dicentis, quod Iudex ex officio tenetur quærere defensiones Reo *in pract. §. nunc videndum num. 7. & in §. sequitur num. 43. & in §. occurrunt sub. num. 3. vers. & non solùm.*

Quare &c.

Desiderius Spretus Pauperum Adu.

Illustriss. & Reuerendiss. Domino

GVBERNATORE

In Criminalibus.

Romana Homicidiorum.

P R O

Domino Guidone Francischino, & Socijs Carceratis.

C O N T R A

Curiam, & Fiscum.

Iuris D. Aduocati Pauperum.

Romæ, Typis Reu. Cam. Apost. 1698

Illñe, & Rñe Dñe. HOnoris cauſa, quæ D. Guidonem eximit ob homicidia ſequuta a pœna rigoroſa, eadem profectò militat ad mitigationem pœnæ ordinariæ Blaſio, & Socijs, qui homicidijs interuenerunt, quamuis prætendatur pacto pretio interueniſſe: Præmiſſo enim, quod procul verſamur à crimine Aſſaſſinij propter præſentiam cauſam habentis, vt communiter ſentiunt *Gabr. conſ.* 170. *num.*8. *& ſequen. vol.primo*, *Bertaz. conſ.*143. *numer.*13., *Guazzin. defenſ.*4. *capit.*13. *num.*3. *Gratian. diſcept.forenſ. capit.*619. *num.*25. *Del Bene de Immunit. Eccleſ.tom.*2. *cap.*16. *dubit.*21. *ſect.*3. *num.*3. *Thor. compend. deciſ.par.* 3. *ſect. prima verbo Aſſaſſinium*, vbi in fine teſtatur ſic fuiſſe iudicatum, *Cortiad. deciſ.*95. *num.* 27. *Reuerendiſs.Zaulus Epiſcopus Verulan. obſeruat.ad ſtatut. Fauentin. lib.*4. *rubr.*14. *n.*17.

Maxima controuerſia fuit inter Doctores, an Pater, vel Maritus poſſit demandare alteri excepto filio homicidium filiæ, vel vxoris adulteræ, & in vtramque partem ſciſſi valdè digladiantur, vt videre eſt *Farinacc. quæſt.* 121. *num.*14. *ad* 18. *Caball.reſol. criminal. caſ.*300. *à num.*45. *& ſeq.*, quamuis pro affirmatiua, & leuiori ſententia excedat numerus, & in contingentia facti pluriès iudicatum fuiſſe conſtet, *Neuizz. Sylu. Nuptial. lib.*1. *ſub num.*98. *Mart.vot. Piſan.*206. *n.*9.

Sed cum quæſtio ſit extra noſtram hypotheſim, fruſtraneus eſſet labor, & vndique inutilis, nec eſt tempùs terendum, illius anguſtia præmente.

Nos verſari conſtat in Auxiliatoribus ad homicidia perpetranda conuocatis iuxta ſenſum Fiſci, proindè non ſolùm non conueniunt termini ſimplicis mandati ob intereſſentiam Principalis, quia cum iſte ſimul manum imponat crimini, ij qui idem operantur, non dicuntur Mandatarij, ſed Auxiliatores, & opem ferentes *Bertazzol. conſ.*143. *n.*12. *verſ. Quo verò, & n.*13.

Sed inſuper ſicuti iſte eximitur ex dicta cauſa honoris à pœna vltimi ſupplicij, ita Socij, & Auxiliatores, vt vna-

A ni-

miter *Paul.de Caſtr.in l.refectionis num.4.& 5.ff.Communi. Prædior.*, & idem repetijt *in conſ.* 277. *ſub num.2. verſic. Ego autem, & ſub num.3. in fine*, qui pro contraria ſolet allegari *lib.* 2., *Iaſ.in l. prima* §. *Vſufructuarius ſub num.5.ff. de oper. nou. nunciat. Cepoll.conſ.4. ſub nu.* 15., *& conſ.* 73. *numer.* 11., *& de ſeruitutibus Vrbanor. Prædior. capit.*23. *num.*10. *in fine, &* 11. *Pariſ. conſ.*144. *num.*21. *& ſeqq. part.*4. *Soccin. Iunior. conſ.*34. *num.*12. *lib.*2. *Facchin.conſil.*36 *num.*22. *verſic.Quoniam præter quam lib.*2. *Caſſan. ad conſuetud. Burgundiæ tit.reditib. vendit.rubric.*5.*num.*44.*fol.mihi* 948., *Marſil. ſingular.* 175. *& in l.vnica num.* 11. *Cod. de rapt. Virgin.*, *Grammat. ſuper conſtit. ſi maritus num.* 2. *& ſeq. Garz. ex gratia viden. dec.*71. *per tot. Farinacc. quæſt.* 121. *num.*20., *& num.*87.

Qui verò citantur pro contraria opinione non loquuntur in noſtris terminis, ſed de marito alteri demandante homicidium Vxoris adulteræ, non autem de Socijs occidentibus vnà cum Viro, vt in caſu noſtro, vt videre eſt *Felin. in cap. Si verò ſub num.primo ergà finem de ſentent. excommun. & in cap.quæ in capit. quæ in Eccleſiarum ſub num.* 13. *poſt med. de conſtit.*, *Bartol. in l.non ſolùm* §. *Si mandato meo num.*5. *ff. de iniurijs*, *Marſil. in dict.l.vnica num.*3. *Cod. de rapt.Virgin.*, *& in ſingul.* 448. *Angel. de malefic. verb. Che hai adulterata la mia Donna num.* 24., *Grammat. in d.conſtitutione ſi maritus n.*9.

Et in contingentia facti ſemper ſocij,qui auxiliati ſunt Maritum occidentem adulteram gauiſi ſunt eadem Indulgentia,quam Principalis reportauit; hoc eſt ſemper euaſerunt pœnam vltimi ſupplicij; imò impuniti, & abſoluti remanſerunt *Cepoll. de ſeruitut. Vrbanorum Prædiorum dicto capit.*23. *num.* 11. *in fin. & conſil.* 4. *num.* 15. *in fin. Neuizzan. in Sylua Nuptial. lib.* 1. *ſub num.*98. *Iaſon. in dicta leg. prima* §. *Vſufructuarius num.* 5. *ff. de nou. oper. Nunciat. Afflict. ſuper Conſtit. Regn. lib.* 1. *Rubric* 8.*de Cultu Pariſ.n.*30.

Nec afficit diſtinctio *Caballi dicto caſ.* 300. *num.* 73. vbi Socij poſſunt quidem impunè aſſiſtere Marito, vel Patri occidenti filiam. vel Vxorem reſpectiuè, vt ſæcuriùs interficiant, non tamen poſſunt manibus ſe ingerere,& occi-

cidere, nam aliàs de occiſo tenerentur.

Quia pro fundamento ſuæ diſtinctionis figit pedes in *Paul. de Caſtr. dicto conſ. 277. lib. 2.* qui tantùm abeſt, quod ſuam intentionem probet, quin potiùs mirificè retorqueatur. Nam poſtquam ſibi obiecit huiuſmodi difficultatem *ſub num. 2.* addit ibi — *Ego autem omnimodam contra, quod nec ille, qui interfecit, nec qui Congregationem fecit poteſt dici, quod teneantur de homicidio quo ad imponendam pœnam Capitalem.*

Et in *conſil. Rollandi à Valle 34. num. 29. & 31.* Sed parcat mihi tàm eximius Doctor, quia & ſi conetur confutare Paulum de Caſtro *in dicto conſil. 154.* pro nobis militantem ſub prætextu quod loquatur contra communem opinionem, hoc non ſufficit ex ſupra citatis auctoritatibus, & ſi tempus pateretur clariùs oſtendiſſem.

Prætereà *Rollandus allegat Pariſium in conſ. 154. lib. 4.* Sed poterat illum omittere, quia probat expreſsè contra ipſum in ſpecie *num. 22.* ibi — *Et in terminis noſtris eſt optima deciſio Pauli de Caſtro in prælegato Conſilio vbi in fortioribus terminis etiam includendo caſum præſentem concludit, conſcios, præſentes, & aſſociantes Maritum in actu dicti homicidij, ac præſtantes opem puniri non debere maiori pœna, quam Principalis per Regul. Acceſſorium de Regul. Iur. in 6.* vltra punctualem auctoritatem Marſilij, & concludit, quod ad omne peius conſiderata omni rigoroſitate puniri non deberent vltrà pœnam temporalis relegationis.

Vltrà quod *Rolandus in dicto Conſilio* expreſsè confutatur *à Facchin. dicto conſil. 36. num. 22. verſic. Quoniam præterquam lib. 2.* Nec ſine viua ratione, nam ſicuti qualitas delictum alterans in principali delinquente illud exaſperat etiam in Auxiliatoribus, quotiès ipſis ſit cognita; ità omnis æquitas expoſtulat, quod qualitas minuens pœnam in Principali agnita ab Auxiliatoribus, ijs quoque ſuffragetur *Decian. tract. Crimin. lib. 9. cap. 33. num. 8. & cap. 36. num. 27. Parinacc. quæſt. 135. num. 34. & 36.* proinde *Caballus* remanet ſine fundamento ſtabili, & contra mentem *tot Doctorum* allegatorum nullam diſtinctionem facientium inter aſſiſtentes ſimpliciter, & inter cooperantes ad homicidium, imò omnes loquuntur

tur de Auxiliatoribus, & insuper pluries Iudicatum reperitur etiam in fortioribus terminis mandati, vt supra dictum est; & adeò honoris causa est efficax, vt non solùm se diffundat in Mandatarios simplices, sed etiam in Mandatarios qualificatos Assassinij qualitate, eosque absolui fecerit, vt *decisum* reperimus apud *Carer. pract. Crimin. §. nono excusatur nu.* 11. *fol. mihi* 197, *ter. Mart. Voto Pisan.* 206. *n.* 9.

Vndè si Mandatarij, & Assassinij eximuntur à pœna ordinaria mortis, quotiès occidant Adulteram de Mandato Viri, necessariò sequitur quod distinctio *Caballi* non sit vera, nec sit recepta in practica, quia si sunt Mandatarij, non possumus negare, quod proprijs manibus occiderint, & nihilominus hanc opinionem Reis fauorabilem contra *Caballum* seruari in practica testatur *Clar. §. Homicidium num.* 51. *circa fin.* vltra decisiones superiùs allatas.

Si igitur pœna vltimi supplicij non sunt plectendi Blasius, & socij ob opem præstitam in Homicidijs, frustra quæritur, an pro habenda ab eorum ore sincera veritate possint supponi tormento Vigiliæ, quod duo requisita exposcit, alterum quod militent indicia vrgentissima contra Inquisitum, alterum quod crimen sit atrocissimum ex præscripto *Bullæ Reformationis san. mem. Pauli V.* §. 10. *n.* 3. *Scanarol. de Visit. Carcerat. lib.* 2. §. 6. *cap.* 4. *num.* 13., & ante eum *Cartar. de mod. Interog. Reor. lib.* 4. *cap.* 2. *n.* 7., & 8. *Baiard. ad Clar. §. fin. quæst.* 64. *post num.* 105. *Farinacc. quæst.* 38. *num.* 71. *Guazzin. defens.* 30. *cap.* 21. *num.* 13. *in princip. vers. Et non debet, & vers. in hac Curia.*

Et licet ampliſſimæ sint facultates Tribunalis, vbi dispensatur vni ex dictis requisitis, nunquàm tamen vidi adhiberi dictum tormentum, nisi vbi non dubitatur, quod crimen de quo prætenditur per Fiscum elici confessionem ab Inquisitis mereatur pœnam vltimi supplicij.

De qua agi credere non possumus ob prætensam conuenticulam, quia congregati non tenentur vlla pœna ob conuenticulam, sed tantum qui illos congregauit, vt egregiè *Bald. in cap. quæ causæ num.* 13. *vers. Tu dic de his, quæ vi metusque caus. Farinacc. q.* 113. *n.* 140.

Nec in hoc casu tractari potest de pœna assertæ conuenti-

culæ

culæ reſpectu D.Guidonis, quia cauſa, ob quam congregauit Homines illi ſuffragatur ad euadendam pænam, cum licitum sit convocare Amicos, & ſocios ad reintegrandam ſuam exiſtimationem, *Marſil.in l.1.num.13.C. de Rapt. Virgin.Pariſ.conſ.154.num.7., & num.15. p.4. Farinacc.d.qu.121.nu.87.Baiard.ad Clar. §.Homicidium num.195. 196. & 197. verſ. & etiam poteſt alios congregare*, & alij ſupra citati.

Quod comprobatur nam quoties quis iuſto dolore motus conuocat Homines pro vindicanda iuiuria non incidit in crimen, & pænam conuenticulæ, *Corn. conſ.216. num.3. verſ. Quinimò ſi multi lib.3.*

Et licet *Farinaccius quæſt.113.n 155.* declaret id procedere, ſi incontinenti fiat; Secùs ſi ex interuallo, ſupplico aduerti, quod quicquid eſſet ſi ageretur de vindicta iniuriæ perſonalis, in quibus terminis ipſe loquitur, quando tamèn agitur de iniuria lædente honorem, vindicta ſumpta in omni tempore dicitur facta incontinenti, tùm quia ſemper vrget, & præmit, tùm quia potius dicitur Reintegratio, & reparatio honoris, quam alias in exiſtimatione læſus conſegui non poteſt, quam vltio, & vindicta, vt ſatiùs credimus ſatisfactum eſſe in alia pro Domino Guidone.

Sed ceſſat omnis prorsùs difficultas, quia forsàn procedi poſſet pro conuenticula, ſi ad malum finem fuiſſent congregati Homines, & nullum alium delictum exindè ſequutum eſſet, at cum fuerint conuocati iuxtà ſenſum Fiſci ad committenda Homicidia, eaque patrata fuerint nequit amplius agi de conuenticula prohibita, ſed de Homicidijs, quia coadunatio hominum tetendit ad eundem effectum, vt eſt *magiſtrale* votum, *Seraphin. dec.61. num.4. & 7.* & ibi aliud votum *Blanchett. nu. 19. & 22. poſt conſil.Farinac lib.2.* vbi quamplurimæ authoritates congeruntur.

Ea potiſſimum ratione, quia vbi principium, & finis ſunt illicita, attenditur finis, & non principium, vt docet *Bartol. viden.in l.quod ait lex §.quod ait num.3. ff. ad leg.Iul. de adult. Alex.conſ.75.n.6.lib.3.Marſil.in pract. §. quoniam n.91. Boſs.in pract.tit.de fauor.defenſ.n.7.*

Additur, quod hominum congregatio non eſt propter ſe illi-

illicita, imò poteſt eſſe quandoque licita, & approbata, vt in caſibus relatis *à Farinac. q.* 113. *n.* 150. 153. 156.; ſed propter malam conſequentiam, & propter prauum finẽ, propter quem fieri ſolet, proindè cum prohibitio congregationis hominum non propter ſe, ſed propter aliud facta, ſit magis attendi debet finis, quam ea, quæ finem præcedunt *Seraphin. d. vot.* 61. *n.* 7.

Neque rigoroſa pœna mortis ingerenda eſſet pro prætenſa delatione armorum reprobatæ menſuræ nedum contra Dominium Gambaſſini, & Franciſcum Paſquini, quia vti Forenſes, nec diù verſantes in Statu Eccleſiaſtico per tantum temporis ſpatium, quo præſumi poſſet in ipſis ſcientia, ſed nec contrà cœteros; nàm &ſi per Conſtitutiones, & Bannimenta comminata ſit pœna vltimi ſupplicij etiam pro eorum delatione, ſiuè retentione, tamèn cum armorum geſtatio ſimiliter propter ſe non prohibeatur, ſed propter pernicioſum finem, qui eam ſequitur, vel ſequi poteſt, cumque dirigeretur ad dicta Homicidia, eaque quamuis non fuerint in totum licita, non tamen ſunt pœnitùs inexcuſabilia, huiuſmodi delationis armorum crimen debet confundi cum fine, pro quo aſportata fuerunt, quia vnum infert in aliud, ne peiora videantur media, quam finis, & licet ſecundum aliquorum opinionem pœna geſtationis armorum non confundatur cum crimine admiſſo, quoties ſit grauior, hoc tamen videtur intelligendum eſſe, quando crimen cum eis patratum ſit vndique illicitum, & inexcuſabile, non tamen vbi minuitur, & extenuatur, atque excuſatur ſaltem in parte à cauſa, ob quam commiſſum eſt.

In omnem caſum cum Iure communi attento armorum delatio ſit leue Delictum, *Bartolus in l. leuia num.* 9. *ff. de Accuſ.*, *& in l. Diuus la* 2. *num.* 8. *circa med. ff. de Cuſtod. Reor.*, *Marſil. in Pract. crim.* §. *Pro complemento num.* 44., *Danz. Pugn. Doctorum tit. de Armis cap.* 2. *num.* 1., *Rouit. ſuper Pragmatic. Regn. Pragm.* 4. *de Armis num.* 34., *Caball. Reſol. crimin. caſ.* 107. *num.* 17.

Licet per Cõſtitutiones particulares, & Bannimẽta aucta ſit pœna fere ad ſummum Apicem, non tamen huiuſmodi auctio illius naturã immutat, adeoùt ſicuti de Iure communi

muni ob eius lœuitatem non infertur Tortura ad habendam veritatem ab indiciatis de dicta dilatione, *Farinacc. q.42.n.7.* ità nec vigore Constitutionum, & Statutorum, quæ pœnam auxerunt, vt optimè *Bald.in l.si eum in vltima lectura n.2.ff.si quis caution.Caualcan. de Brach.Reg. part.3.sub n.258. vers.tamen supradixi, Guazzin. defens. 30.cap.3.sub n.3.vers.Plus dicit.*

Et in terminis tormenti Vigiliæ, quod nequeat inferri prò Delicto, quod de sui natura non sit atrocissimum, sed vigore Constitutionis habeatur pro tali, quoad pœnam, nisi expressè illius natura mutetur etiam circa modum procedendi *D.Raynald.in suis obseruat.crimin.cap.5. §.1. ad 3.n.125.& seq.*

Et videmus in Bannimentis Illustriss. D. mei, quod vbi voluit posse procedi ad tormentum Vigiliæ in casibus, in quibus de Iure procedi non posset, id expressè declarauit, quod prò certo non feciisset, si potuisset tale tormentum ingeri in Delictis de Iure non capitalibus, sed vigore Bannimentorum pœna vltimi supplicij expiandis.

Quarè &c.

H. de Archangelis Pauper. Proc.

Illuſtriſs. & Reuerendiſs. Domino

GVBERNATORE

In Criminalibus.

Romana Homicidiorum

P R O

Blaſio Agoſtinelli, & Socijs
Carceratis.

C O N T R A

Fiſcum.

Memoriale Facti, & Iuris.

Romæ, Typis Reu. Cam. Apoſt. 1698.

SVMMARIVM

Num. 1.

Depoſitio iurata Teſtis ſuper paupertate d. D. Guidi Franceſchini, & miſerijs paſſis à DD. Comparinis tempore, quo permanſerunt in illius Domo in Ciuitate Aretina.

Die 24. Iunij 1694. Pro D. Petro Comparino contra quoſcumque examinata fuit Romæ per me &c. ad perpetuam rei memoriam Angelica filia q. Petri q. Io: Baptiſtæ de Caſtelluccio Aretinæ Diœceſis &c. ætatis ſuæ annorum 35. circitèr cui delato ſibi iuramento veritatis dicendæ depoſuit, proùt infrà videlicet.

Dico à V. S. per verità come trouandomi in Arezzo nel meſe di Gennaro proſſimo paſſato in Caſa della Sig. Maddalena Baldi Albergotti, mi fù propoſta l'occaſione d'andare à ſeruire la Signora Beatrice Franceſchini, e ſuoi figlioli &c. mi riſolſi d'andarui, ſi che eſſendo andata à Caſa di dd. Signori Franceſchini, parlai con la detta Signora Beatrice, la quale mi tirò da parte in vn ſtantiolino, e mi diſſe, che mi haueria pigliata per Serua, mà che non haneſſi mai trattato à pàrte con li due vecchi, ch'erano in Caſa, vno de' quali era il Sig. Pietro Camparini, e l'altro la Signora Violante ſua moglie, e di più m'impoſe, che ſe per fortuna mi haueſſe chiamato qualcheduno di dd. vecchi nella loro Camera io non ci fuſſi andata, ſe prima non dimandauo licenza à lei, e con queſte condizioni mi accettò al ſeruizio, onde eſſendoui entrata, oſſeruai, che la Signora Violante per il più ſe ne ſtaua nella ſua Camera piangendo, e ſe bene erano freddi così rigoroſi ſe ne ſtaua ſenza fuoco, ſi che io compaſſionandola di naſcoſto di detta Beatrice pigliauo il fuoco del mio Caldanino, e glielo portauo, e non più toſto glie lo porgeuo la detta Signora Violante mi mandaua via dalla ſua Camera, perche detta Signora Beatrice non haueſſe pigliato ſdegno, che io haueſſi fatto detta carità, anzi vna volta trà l'altre, che ſe n'accorſe mi fece laſciare il foco nel Cammino con leuarmi la Paletta dalle mani, con brauarmi, e dirmi, che ſe lei lo voleua, foſſe venuta da ſe à pigliarſelo, perche non voleua, ch'io faceſſi alcun ſeruizio à dd. Signori Comparini, li quali ne pure trà di loro poteuano parlare, perche tanto il Sig. Guido Franceſchini, quanto il Sig. Canonico D. Girolamo ſuo fratello, e Signora Beatrice loro Madre ſi metteuano chi à vna porta della loro ſtanza, e chi ad vn' altra porta della medeſima ſtanza à ſentire ciò, che li dd. Signori Comparini trà di loro diceuano, e diſcorreuano, e cio ſeguiua ogni ſera, & ogni mattina, ſin tanto, che non vſciua dalla detta Camera, e Caſa il detto Signor Pietro, il quale ſe ritornaua di notte non voleuano, che fuſſi andata à fargli lume per le ſcale, anzi che vna volta, che poteua eſſere vna mezz' hora di notte in circa, che tornò à Caſa detto Sig. Pietro, & hauendolo io ſentito raſchiare pigliai il lume per andargli incontro, di che eſſendoſi accorto il Sig. Guido mi leuò il lume dalle mani, con

dirmi .che badaſſi à ſedere, e che non mi accoſtaſſi, ſe non voleuo ſaltare la fineſtra, il che tanto più mi pareua male, quanto, che haueuo inteſo dire in loro Caſa, che prima, che entraſſi al ſeruizio di dd. Franceſchini tornando vna ſera di notte il detto Signor Pietro per ſalire le ſcale ſenza lume, cadde per le medeme ſcale, e ſi fece vna bruttiſſima ſtincatura, per la quale fù obligato guardare il letto per molti giorni. Nell' iſteſſo tempo, che ſtauo al detto ſeruizio ſucceſſe vna mattina mentre ſi pranzaua, che li dd. Franceſchini diedero certi diſguſti alla detta Signora Violante, alla quale per cauſa de' medemi venne vn'accidente, ch'appena arriuò nella ſua ſtanza, e ſi buttò ſopra vna ſedia di paglia doue ſi ſuenne, di che eſſendoſi accorta la Signora Franceſca Pompilia moglie di detto Signor Guido, cominciò à lagnarſi, e gridare ad alta voce dicendo: La Signora Madre mia ſi more, à che accorſa io, volſi ſlacciarla, e portargli vn poco d'aceto, e di foco, mà perche di queſto non ve n'era, pigliai della legna, e la miſi nel Camino per accenderla, il che hauendo veduto la detta Signora Beatrice, lei medeſima leuò la legna dal foco, con ſdegno grande, e mi diſſe, che io pigliaſſi la Cenere, che quella poteua riſcardargli li piedi, ſi che io pigliai la cenere, che era nel detto Camino, la quale per il freddo grande, che regnaua, quando arriuai nella Camera doue ſtaua detta Signora Violante mezza morta, già detta cenere era fredda, ſi che tanto io, quanto la detta Signora Pompilia piangendo ambedue ſpogliaſſimo detta Signora Violante, e la metteſſimo à letto, che era giaccio, e perche io piangeuo quando tornai in Cucina dopò hauer meſſa à letto eſſa Signora Violante la detta Signora Beatrice diſſe, vuoi, che io pigli vn poco di capecchio per nettarſi gl'occhi, il che ſentì ancora la Signora Franceſca Pompilia ne fece qualche ſchiamazzo à detta Signora Beatrice, non volſe, che più tornaſſi in detta Camera, ne volſe, che li faceſſi vn poco di pancotto conforme detta Signora Violante mi haueua impoſto. Succeſſe pochi giorni dopò, che fù del meſe di Febraro ſuſſeguente, che mentre li Signori Franceſchini, Franceſca Pompilia, Sig. Pietro, e Signora Violante ſtauano à tauola diſcorſero di volermi mandar via di Caſa, ſi come anche antecedentemente li detti Franceſchini mi haueuano licentiato; il che inteſo dalla detta Signora Franceſca Pompilia, che com'hò detto ſtaua à Tauola con l'altri, diſſe al detto Sig. Pietro, e Violante, ſapete perche la vogliono mandar via? Perche ſi ſono dati à credere, che lei mi habbia ridetto, che la Signora Beatrice gli diceſſe li giorni paſſati, che voleua pigliarſi il capecchio per ſciugarſi le lagrime dagl'occhi, quando piangeua per l'accidente ſucceſſo alla detta Signora Madre; Allora il detto Sig. Pietro diſſe, pregando dd. Signori Franceſchini, che mi haueſſero in gratia ſua tenuta per otto, ò dieci altri giorni, perche in occaſione, che lui voleua ritornare in Roma aſſieme con la Signora Violante mi haureb-

be

be condotto con loro, e che questa gratia poteua lui sperarla da loro, essendo la prima, che li haueua domandato, a che niuno de' Franceschini rispose, mà leuatosi da Tauola il detto Sig. Guido venne alla volta mia, e mi diede due bonissimi schiaffi, e vi accorsero ancora, mentre il detto Signor Guido mi daua il detto Canonico suo fratello, e mi diede de calci, e la Madre de pugni dicendomi và via, adesso, il che sentito, e veduto dalla detta Signora Violante, commiserandomi disse à dd. Signori doue volete, che vadi adesso questa pouerella, e tutti li dd. Francheschini d'accordo dissero alla detta Signora Violante, vattene via con la Serua ancora tu, dicendogli carogna, & altre parole ingiuriose, si che detta Signora Violante andò nella sua Camera per vestirsi, & il Signor Canonico sfoderò vna spada, e li corse dietro in detta Camera, e serrò la porta in modo, che temendo io, che non dasse qualche ferita alla detta Signora Violante, corsi per entrare in detta Camera, e trouai, che il detto Signor Canonico s'era serrato dentro detta Camera, si che tanto io, quanto il detto Signor Pietro, e Francesca Pompilia ci mettesmo à piangere, e gridare per aiuto, stimando Noi, che il detto Canonico là dentro ammazzasse detta Signora Violante, e doppo qualche poco di tempo mi partij dalla detta Casa, e lasciai, che dd. Signori Coniugi, e Signora Francesca Pompilia gridauano con dd. Signori Francheschini; In tutto il tempo, che io mi trattenni al seruitio delli detti Signori Francheschini in Arezzo, com'hò detto di sopra, posso dire per verita d'hauer seruito à Tauola sempre matina, e sera li detti Signori Francheschini, Signora Francesca Pompilia, Signor Pietro, e Signora Violante de Comparini, e per il vitto, e mangiare di tutti dd. Comenzali, il Sabbato detti Signori Francheschini comprauano vn' Agnellino da latte, nel quale spendeuano dodici, ò quattordici gratie al più, e questa la detta Signora Beatrice, che cucinaua lo ripartiua per tutta la settimana, anzi la Testicciola d'vno di detti Agnellini si ripartiua per l'antipasto in tre volte, e l'altre volte si seruiua per antipasto della Coratella, e Budella ripartitamente per tutti li giorni della settimana, che si mangiaua carne, ne vi era altra sorte di carne à tauola per sodisfare alli bisogni di ciaschedun de' Comenzali. Quando non si comprauà il Sabbato, come hò detto detto Agnellino il Signor Guido, ò daua li denari à Gioseppe Garzone di Casa, perche comprasse due libre di carne vaccina, quale ogni matina la detta Signora Beatrice da se medema metteua à cucinare, ne voleua, ch'altri ce s'ingeriffe, e di questa si mangiaua à Tauola, e si ripartiua anche per la sera, e perche detta carne era così dura, che il detto Signor Pietro non poteua mangiare, perche non si faceua cuocere, il detto Signor Pietro restaua per il più senza mangiar carne, ma mangiaua solamente vn poco di pane stufato, mal conditionato, & vna fettarella di cascio, e con

questo se la passaua detto Signor Pietro ne' giorni, che si com-
praua la vaccina, ne' giorni poi di magro si mangiaua vna
minestra di legumi, con vn poco di Luccio salato, e qualche
volta vn poco di castagne alesse, sempre però ò si mangiasse
di magro, ò di grasso, il pane era negro come inchiostro, e
non leuito, nè ben conditionato, il vino poi, che seruiua per
la detta Tauola era vn fiasco nel quale prima di metterci il vi-
no la detta Signora Beatrice mi ci faceua mettere dell'acqua
fino alla metà, e così ammezzato d'acqua, mi faceua empire
il fiasco di vino, e molte volte era più acqua, che vino, e
questo fiasco si metteua à Tauola, & ordinariamente bastaua
per tutti li Commensali, ancorche il fiasco à rigore non te-
nesse più di tre fogliette, e mezza all'vso di Roma. Inoltre di-
co, che partita io dal detto seruizio, non molti giorni doppo,
fù detto publicamente per Arezzo, che essendo ritornato la se-
ra, il detto Signor Pietro à Casa verso vna mezz' hora di notte
in circa haueua trouato, che la porta di strada era serrata in
modo, che lui non poteua aprirla, si che fù astretto à bussare,
nè vedendo la Signora Violante, che alcuno di Casa si moue-
na per andarli ad aprire, lei medema scese le scale per aprirle,
mà perche la porta era serrata con la chiaue, benche hauesse
chiamato il Signor Guido, & altri, che erano in Casa, nondi-
meno non si mosse alcuno, per andarli ad aprire, e che perciò
il detto Signor Pietro sen'andasse à dormire all'Osteria, & es-
sendo ritornato la mattina à casa per riuedere tanto la Signo-
ra Violante, quanto la Signora Francesca Pompilia, si diceua
parimente per Arezzo, che essendosi lamentato il detto Signor
Pietro per esser stato serrato fuori di casa di detto Signor Ca-
nonico, ingiuriando tanto il detto Signor Pietro, quanto la
detta Signora Violante, nacque tra di loro nuoua contesa, e
perciò ambedue erano stati cacciati fuori di casa, e che la Si-
gnora Violante fù riceuuta dal Signor Dottor Borri, doue la
sera cenò, e la notte dormì, e che il detto Signor Pietro era
andato all'Osteria à cenare, e dormire, il che sentito da me
me n'andai à casa del detto Signor Borri per vedere la detta Si-
gnora Violante, ma non fui introdotta, perche la moglie del
detto Signor Borri mi disse, che me nè fussi andata à fare li
fatti miei, perche non voleua, che li Francheschini, che stana-
no in faccia alla sua casa si fossero accorti, che io fussi an-
data à vedere la detta Signora Violante, e che perciò ne fusse
nato qualche disordine, la mattina seguente poi andai alla
detta Osteria doue mi era stato detto, che vi era andata anche
la detta Signora Violante per trouare il detto Signor Pietro,
ma non vi trouai alcuno di loro, e mi fù detto dall'Oste, che
erano vsciti; si che per non sapere doue trouarmeli, me ne
tornai à casa della detta Signora Maddalena Albergotti, doue
mi tratteneuo, e sentij doppo dire, che tanto detto Signor Pie-
tro

tro, quanto la Signora Violante erano ritornati alla detta Oſteria, doue haueuano pranzato, e che poi per l'interpoſitione del Signor Commiſſario d'Arezzo erano rimeſſi d'accordo con detti Franceſchini, che però erano ritornati à caſa loro, e ſentiuo dire ancora, che continuorno detti Franceſchini à maltrattare, & ingiuriare detti Signori Coniugi nello ſteſſo modo, che continuamente faceuano nel tempo, ch'io ſtauo al loro ſeruitio, e che però vltimamente furno neceſſitati partire d'Arezzo, e tornarſene in Roma, e tutte le ſudette coſe le sò per hauer veduto io medeſima, e ſentito li mali trattamenti, che detti Signori Franceſchini faceuano à detti Signori Comparini, e l'ingiurie, che diceuano, tanto à loro, quanto alla detta Signora Franceſca Pompilia, e reſpettiuamente per hauerle inteſe dire publicamente per Arezzo, dou'è publico, e notorio, e n'è publica voce, e fama in cauſa ſcientiæ &c.

Adi 17. Giugno 1697.

Num. 2.

Diuerſæ atteſtationes ſuper recurſu Franciſcæ ad Epiſcopum, & Commiſſarium propter ſæuitias Guidonis Viri, & Conſanguineorũ

Atteſtiamo noi infraſcritti à chiunque fà di biſogno, come la verità ſi è, che la Signora Franceſca Pompilia Comparini moglie del Signor Guido Franceſchini, ſi è più, e più volte fuggita di caſa, e andata correndo, quando da Monſignor Veſcouo, e quando dal Signor Commiſſario, e quando da vicini per li continui ſtrapazzi, e mali trattamenti, che li veniuano fatti, tanto dal predetto Signor Guido ſuo Marito, che dalla Signora Beatrice ſua Socera, e dal Signor Canonico Girolamo ſuo fratello, e ciò lo ſappiamo per eſſerci incontrati in eſſa, quando come ſopra fuggiua, & eſſerne di ciò publica voce, e fama in tutta la Città d'Arezzo; In fede di che habbiamo ſottoſcritta la preſente di noſtra propria mano queſto dì, & anno ſudetti &c.

Io Canonico Aleſſandro Tortelli affermo eſſere la verità quanto ſopra, & in fede hò ſcritto di propria mano &c.

Io Marco Romani affermo eſſere la verità quanto ſopra, & in fede &c. mano propria.

Io Antonio Franceſco Arcangeli affermo eſſer la verità di quanto ſopra ſi contiene mano propria.

Io Cammillo Lombardi affermo quanto ſopra ſi contiene mano propria.

Io Franceſco Iacopo Conti di Biſſignano affermo quanto ſi contiene, & in fede &c. mano propria.

Io Vrbano Antonio Romani Sacerdote Aretino, & al preſente Curato della Chieſa Parochiale di S. Adriano affermo eſſere la verita di quanto ſopra ſi contiene, & in fede hò ſcritto di propria mano.

Sequitur recognitio manus in forma &c.

Particula Epiſtolæ ſcriptæ à D. Thoma de Romanis Auunculo Guidonis Franceſchini q. Petro Comparino Romam

Molt'Illuſtre Signore, Signore Padrone Oſſeruandiſs.

Non poſſo far di meno &c. partita, che ella fù di poco la Signora Franceſca &c: fuggì di caſa, e ſe n'andò in S. Antoni o, quali corſero li Signori Guido, Canonico, e Beatrice &c. accio ella tornaſſe à dietro, & in queſta credenza la Signora Franceſca tornò à caſa &c. Ieri eſſendo le Signore Franceſca, e mia Sorella in Duomo alla Predica fornita, che fù nell'andarſene, quando fù vicina alla Porta di Monſignore ſe ne fuggì in Palazzo, doue che era più vicino ad vn'ora di notte, che erano in Palazzo con grandiſſimo contraſto &c.

Particula alterius Epiſtolæ ſcriptæ per D. Equitem Bartholomæum de Albergottis Petro Camparini.

Illuſtriſſimo Signore, e Padrone Colendiſſimo.

Nel ritorno che feci &c. la Signora Spoſa quà ſtà malenconica, e due ſere doppo la partenza di lor Signori fece ſtrepito grande, perche non voleua andare à dormire col Signor Guido ſuo Conſorte &c. Ieri giorno delle Palme la Signora Spoſa andò &c. alla Predica &c. e nel partirſi ſi cacciò à correr nel Palazzo del Veſcouo &c. ſi meſſe à ſommo le ſcale, e vi ſtiede fino à mezz'ora di notte, e ne la Signora Beatrice, ne Signor Guido erano ſufficienti per farla ritornare à caſa, già che il Veſcouo non gli diede vdienza, ma vi accorſe il Segretario del Veſcouo, il quale eſortò il Signor Guido, e la Signora Beatrice, à non ſtrapazzare la Signora Spoſa &c. baſta doppo le tante biſticcie riconduſſero la Sigſiora Spoſa à caſa &c.

Num. 3.

Depoſitio Franciſcæ ſuper aſſ. Epiſtolis ab ea ſcriptis Abbati Franceſchino & prius delineatis à Viro, egiſtrata in Proceſſu fabricato ſuper prateuſa fuga.

Die 21. Martij 1697. Conſtituta Franciſca Comparina &c. & interrogata an nunquam tranſmiſerit aliquam Epiſtolam ad Abbatem Franceſchinum hic in Vrbe tempore quo permanſit in Aretio.

Reſpondit. Io mentre ſtauo in Arezzo ſcriſſi ad iſtanza di mio Marito all'Abbate Franceſchini mio Cognato quì in Roma, ma perch'io non ſapeuo ſcriuere eſſo mio Marito faceua la lettera col toccalapis, e poi mi faceua ripaſſarla ſopra colla penna, & inchioſtro da me, e mi diceua, che ſuo fratello hauea guſto d'hauer qualche mia lettera ſcritta da me, e queſto fù due, ò trè volte.

Interrogata an ſi videret aliquam ex Epiſtolis vt ſupra ſcriptis, & tranſmiſſis ad Vrbem ad eundem Abb. Franceſchinũ recognoſceret &c.

Reſpondit. Se V.S. mi faceſſe vedere qualcheduna delle lettere da me ſcritta come ſopra, e mandate all'Abbate Franceſchini le riconoſcerei beniſſimo.

Et oſtenſa ſibi per me de mandato Epiſtola, de qua in Proceſſu incipien. -- Cariſſimo Signor Cognato ſono con queſta &c. & finien. &c. -- Arezzo 14. Giugno 1694. affettionatiſſima Serua, e Cognata Franceſca Comparini ne Franceſchini.

Re-

Reſpondit hò viſto, e veduto beniſſimo queſta letteta moſtratami d'ordine di V.S. che comincia -- Cariſſimo Signor Cognato ſono con queſta &c. e finiſce Franceſca Comparini ne Franceſchini, & hauendola oſſeruata mi pare, ma non poſſo atteſtare per verità, che ſia vna lettera da me ſcritta nella conformità ſudetta al Signor Abbate Franceſchini mio Cognato &c.

Cariſſimo Cognato.

Num. 4.

Tenor Epiſtolæ ſcriptæ vti ſupra Abbati Franceſchino.

Sono con queſta à riuerir V.S., e ringratiarla dell'operationi hà fatte per collocarmi in queſta Caſa, doue lontana dalli miei Genitori viuo, ora vna vita tranquilla, & vna ſalute perfetta non hauendo li medemi à torno, che mi contriſtauano giorno, e notte con li peruerſi loro comandamenti contro la legge humana, e diuina à non amare il Signor Guido mio marito, e fuggire di notte dal letto del medemo con farmeli dire, che ſeco non ci haueuo genio, che non era mio marito, perche ſeco non hò figli, e con farmi fare in più volte le fughe dal Veſcouo, ſenza veruna cagione con farmeli dire, che io voleuo far diuortio con il Signor Guido, e permettere vn gran diſordine in Caſa, diſſe mia Madre al Veſcouo, al Signor Guido, e poi per la Città, come il Signor Canonico mio Cognato mi haueſſe richieſto dell'honore coſa non mai penſata dal medeſimo, mi ſtimolauano di continuar i conſegli lontani dal giuſto, e dalla pace, che ſi deue al marito con laſciarmi nella loro partenza per eſpreſſo comandamento d'obedienza ad ammazzare il marito, e dare il Veleno alli Cognati, e Socere, ad incendiare la Caſa, e romper vaſi, & altro, acciò non pareſſe doppo partiti, che foſſero ſtati loro appreſſo il Mondo, che mi conſigliauano à fare tante leggierezze, & in fine della loro partenza mi laſciorono, che io mi ſcieglieſſi vn Giouine à mio genio, e che ſeco me ne fuggiſſi à Roma, e tant'altre coſe, che per roſſore tralaſcio, ora che non hò chi mi ſollieui la mente godo vna quiete di Paradiſo, e conoſco, che li miei Genitori mi guidauano per loro pazzia al precipitio, onde riconoſcendo li ſpropoſiti fatti per comandamento de' miei Genitori ne chiedo perdono à Dio, à V.S., à tutto il mondo volendo eſſer buona Chriſtiana, e buona moglie del Signor Guido mio, quale tante volte mi ſgridaua con maniera amoroſa dicendomi, che vna volta l'haurei ringraziato delle riprenſioni mi faceua, e di queſti cattiui conſegli mi faceuo conoſcere, che mi dauano li miei Genitori, e mi confermo. Arezzo 14. Giugno 1694.

Affettionatiſſima Serua, e Cognata
Franceſca Comparini ne' Franceſchini.
Foris.

Num. 5.

Depoſitio Franciſcæ Pompiliæ, quod rogauerit Canonicum, quod ſibi præſentauerit auxilium in fuga.

Die Lunæ 13. Maij 1697.

Franciſca filia Petri Comparini &c.

Interrogata vt dicat qua de Cauſa, & quo tempore præcisè diſceſſit à Ciuitate Aretij, & ad quem effectum reſpondit. Racconterò à V. S. &c. vn meſe fà in circa andai à confeſſarmi da vn Padre di S. Agoſtino, che li diceuano il Romano, e gli raccontai tutti li miei guai pregandolo, che ſcriueſſe in mio nome, perche io non sò ſcriuere, à mio Padre con rappreſentargli, che io ero diſperata, e che ero neceſſitata di partire da mio marito, e venirmene da lui in Roma, mà non ebbi riſpoſta, e così non ſapendo à chi ricorrere per mettere in eſecuzione queſta mia volontà, e penſando che neſsuno del Paeſe, ò per parentela, ò per amicizia di mio marito non mi hauerebbe aſſiſtito; finalmente mi riſolſi parlarne al detto Caponſacchi, perche ſentiuo dire ch'era huomo riſoluto conforme paſsando vn giorno auanti la Caſa mia in tempo, che mio marito era fuori di Città, lo chiamai, e dalle Scale gli parlai con rappreſentargli il pericolo, nel quale mi trouauo anco per cauſa ſua, e che perciò lo pregauo à volermi condurre quà in Roma da mio Padre, e mia Madre, mà eſso mi replicaua, che non voleua in conto alcuno ingeritſi in queſta faccienda, perche ſarebbe ſtato malſentito da tutta la Città, tanto più, ch'eſso era amico della Caſa di mio marito, mà io lo ſcongiurai tanto, e gli diſsi, che era opera di Chriſtiano liberare dalla morte vna pouera donna foraſtiera in modo tale, che l'induſsi à prometterm̃i, che mi haurebbe condotto come ſopra, & allora mi diſse, che hauerebbe fermato il Caleſse, e che quando foſse ſtato aggiuſtato nel paſsare, che haueri fatto auanti Caſa noſtra, me ne haurebbe dato il ſegno con farſi cadere il Fazzoletto, mà eſsendoci paſsato il giorno ſeguente, ch' io ſtauo alla Geloſia non fece detto ſegno, & il giorno ſuſseguente eſsendo ripaſsato come ſopra ci riparlai nuouamente, e mi dolſi con eſso, ch'haueſse mancato alla parola datami, e lui ſi ſcusò, che non haueua trouato Caleſse in Arezzo, & io gli replicai, ch'in tutti li modi l'haueſse procurato anco di fuori conforme promiſe di fare, e la Domenica vltima del meſe paſsato ripaſsando auanti Caſa fece il ſegno con il Fazzoletto come haueua detto, e così eſsendo andata à letto con mio marito la ſera, & accortami la notte, che il medemo dormiua mi alzai da letto, mi veſtij, e preſi alcune robbicciuole di mio vſo, vna ſcatola, con molte bagattelle dentro, & alcuni denari, che non sò quanti foſsero da vn Scrigno, che vi erano anche de' miei proprij conforme appariſce dalla nota tanto delle robbe, quanto delli denari fatta dal

dal Cancelliere in Caſtel Nuouo, e poi ſceſi à baſſo, che era l'Alba doue trouai detto Caponſacchi, & andaſſimo inſieme à Porta S. Spirito fuori della quale ſtaua vn Caleſſe con due Caualli, e Vetturino, e montati tutti due in Caleſſe, ce ne veniſsimo alla volta di Roma con caminar notte, e giorno ſenza fermarci, ſe non tanto quanto ſi rinfreſcauano, e mutauano li Caualli ſinche giungeſſimo à Caſtel Nuouo doue arriuaſſimo all'Alba, e poi foſsimo ſopragiunti, com'hò raccontato di ſopra à V.S. da mio marito con farci arreſtare dalli Sbirri come ſopra &c.

Num. 6.

Atteſtationes tàm Religioſorum, quam aliorum omni exceptione maiorum, qui aſſiſtentiâ præbuerũt Franciſcæ vſque ad obitum ſuper honeſtate, & declaratione ab ipſa emiſſa de nunquam violata fide Coniugali.

Io infraſcritto Religioſo Agoſtiniano Scalzo fò fede com'eſſendomi trouato all'aſſiſtenza della Signora Franceſca Comparini dal primo iſtante del caſo lagrimeuole, fino all'vltimi periodi della ſua Vita, dico, & atteſto con giuramento Sacerdotale alla preſenza di quel Dio, che mi deue giudicare, come hò trouato, & ammirato à mia confuſione in queſta ſia ſempre benedetta figliola vna coſcienza innocente, e Santa, & in quelli quattro giorni, che ſoprauiuette eſſendo da me eſortata à perdonare, queſta con lagrime à gl'occhi, e con voce placida, e compaſſioneuole riſpondeua Gieſù gli perdoni, che io di già con tutto il cuore l'hò fatto. Ma quello che è più d' ammirare ſi è, che ſentendo gran dolore nella ſua malatia, mai gl'hò vdito dire parola offenſiua, ò impatiente, ne tampoco ſturbamento eſterno, ne contro Iddio, ne il proſſimo, ma ſempre conformata alle Diuine diſpoſizioni dicea Signore habbiate miſericordia di me, coſa inuero, che ſi rende incompoſſibile con vn'Anima, che non ſtia vnita à Dio, alla quale vnione non ſi giunge in vn ſolo iſtante, mà bensì con habito inueterato. Di più dico, che ſempre l'hò viſta moderatiſſima, e maſſime nell'occaſione del medicarſi, che ſe in lei non ci fuſſe ſtato l'abito buono in quell'occaſione non haueria abbadato à certe minuzzerie intorno alla modeſtia da me molto bene notate, & ammirate, à tal ſegno, che vna Zitella non ſaria potuta ſtare alla preſenza di tant'huomini con quella modeſtia, e compoſitione con che ſtaua quella benedetta figliola benche moribonda. E ſe ſi crede, che lo Spirito Santo quello, che fauella per bocca dell'Euangeliſta in quelle parole dette da S. Matteo nel cap. 7. che Arbor mala non poteſt bonos fructus facere; notando che dice non poteſt, e nò, non facit, cioè mettendo impoſſibile ridurre la potenza ad atti di perfettione, quando l'iſteſſa è imperfetta, & infetta da vizii, ſi deue dire che queſta figliola era d'ogni bontà, e modeſtia, mentre con tutta facilità, e tutta eſattezza facea atti virtuoſi, e modeſti anche nell'vltimo della vita. Di più è morta con gran ſentimento di Dio, con gran diſpoſitione interna con tutti li Santi Sagramenti della Chieſa, e con ammirazione di

di tutti li circostanti Canonizandola per Santa. Non dico di più per non esser tacciato di partiale sò molto bene, che solus Deus est scrutator Cordium. Ma sò anche che exabundantia Cordis os loquitur; e che dice il mio gran S. Agostino, che talis vita, finis ità. Onde hauendo notato in questa sia sempre benedetta figliola parole Sante, opere virtuose, attioni modestissime, e morte da Anime di gran timor di Dio per scarico della mia coscienza sono necessitato, e non posso altro dire, che necessariamente bisogna, che sempre sia stata vna Giouane buona, modesta, & honorata &c. questo dì 10. Gennaro 1698.

Io Frà Celestino Angelo di S. Anna Agostiniano Scalzo affermo quanto di sopra hò detto mano propria.

Alia attestatio, vt supra.

Noi sottoscritti per la verità richiesti facciamo piena, & indubitata fede mediante il nostro giuramento, come in occasione, che ci siamo trouati presenti, e siamo assistiti all'vltima infermità della quale è morta Francesca Pompilia Moglie di Guido Franceschini, essendo la medesima stata più volte ricercata da Padri Spirituali, & altre persone, se haueua commesso mancamento alcuno al detto Guido suo Marito, per il quale gli hauesse dato occasione di maltrattarla nel modo, che si vedeua, e farla maltrattare à morte, la medesima sempre hà risposto, che non gl'hà in alcun tempo commesso mancamento alcuno, e sempre è vissuta con ogni castità, e pudicitia, e ciò noi lo sappiamo per esserci trouati presenti in detta Infermità hauer'inteso tutte le dette richieste, e risposte in occasione anco d'hauerla medicata, & assistita, & hauerla sentita rispondere à dette richieste come sopra nelli qnattro giorni, ch'è stata nelli patimenti delle ferite, & hauerla ben veduta, e sentita, e per hauergli veduto fare vna morte da Santa. In fede habbiamo sottoscritta la presente attestatione di nostra propria mano in Roma questo dì 10. Gennaro 1698.

Io Nicolò Costantio &c. che assistito alla Cura della sudetta Francesca Pompilia per lo spazio di quattro giorni attesto quanto di sopra &c.

Io Fra Celestino Angelo di S. Anna Agostiniano Scalzo dico, come mi sono trouato presente dal primo istante del caso fino alla fine della vita, & hò sempre assistito alla sudetta, la quale sempre diceua, che Dio li perdoni in Cielo, conforme io li perdono in terra, mà per la cosa, che m'oppongono, e mi assassinorono sono innocentissima à segno tale dicea, che Dio questo peccato non glielo perdonasse, perche non l'hauea fatto, morì come vna Martire innocente in presenza d'vn' altro Reu. Sacerdote, con edificazione di tutti li circostanti, sicome sopra affermo mano propria

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Io Sacerdote D. Placido Sardi affermo quanto hà detto il ſopradetto Padre Fra Celeſtino trouandomi preſente come ſopra mano propria.

Io Marcheſe D. Nicolò Gregorij affermo come ſopra mano propria,

Io infraſcritto affermo quanto nella retroſcritta fede ſi contiene, come anco l'atteſtatione del Reu. P. Celeſtino di Giesù, e Maria, & hò aſſiſtita la retroſcritta Signora Franceſca Pompilia per il primo, hauendola raccolta da terra oue giaceua abbandonata di forze per cauſa delle ferite, & haueua la teſta sù le gambe del Sig. Pietro Comparini già morto, e la medema ſi confeſsò nelle mie braccie al P. Rettore del Collegio Greco, perche non ſi poteua reggere, nè ſtare colca, e dall'ora non l'hò mai laſciata, mà ſempre aſſiſtita ſin' alla morte ſua, che è ſtata la più eſemplare Chriſtiana, & edificante, ch'io mai habbia viſto, hauendola ſempre viſta raſsegnata nel Diuino volere, e ſempre ſi confidaua nella ſua innocenza &c.

Io Giuſeppe d'Andilli mano propria.

Io infraſcritto atteſto, & affermo quanto in tutte dette fedi ſi contiene per hauer aſſiſtito à detta q. Franceſca Pompilia &c.

Dioniſio Godyn mano propria.

Io Luca Corſi affermo quanto in tutte dette atteſtationi ſi contiene per hauer aſſiſtito giorno, e notte ſino che è durata l'infermità di detta qu. Signora Franceſca Pompilia, e ſentito quanto ſopra mano propria.

Io Gio: Battiſta Guitens Speziale, che hò aſſiſtito alli medicamenti, e cura della detta quondam Franceſca Pompilia affermo quanto in tutte le ſudette fedi, & atteſtationi ſi contengono, per hauer continuamente in tutto il tempo notte, e giorno dell'infermità della medeſima aſſiſtito mano propria.

Io Gio: Battiſta Mucha Giouine del ſudetto Gio: Battiſta Guitens Speziale affermo quanto di ſopra nelle dette atteſtationi ſi contiene, per hauer aſſiſtito à detta quondam Franceſca Pompilia mano propria.

Si fà piena, & indubitata fede per me quì ſottoſcritto Abbate D. Liberato Barberito Dottore della S. Teologia, qualmente coll'eſſer ſtato chiamato ad aſſiſtere alla morte della q. Signora Franceſca Pompilia Comparini, hò oſseruato in più volte, e ſpecialmente nel tempo d'vn intiera notte la nominata deſonra con Chriſtiana raſsegnazione ſoffrire i dolori del ſuo male, e con ſoprahumana generoſità condonare l'offeſe di chi con tante ferite l'haueua cauſato innocentemente la morte, anzi

per

per lo ſpazio della ſudetta notte oſſeruai la tenerezza di coſcienza della nominata, hauendola paſsata in addurmi quotidiani ſentimenti d'vna eroica, e chriſtiana perfettione, tanto che poſso atteſtare, che per la prattica io hò, eſsendo ſtato per quattro anni Vicario nella Cura della bo: me: di Monſignor Veſcouo di Monopoli non hauer oſseruato moribondi con ſimili ſentimenti, tanto più con la condizione d'vn male cosi violentemente da altri cauſatoli, onde in fede, &c. Roma, queſto di 10. Gennaro 1698.

Io Abbate D. Liberato Barberito affermo quanto di ſopra &c.

Illuſtriſs. & Reuerendiſs. D.

GVBERNATORE

In Criminalibus:

Romana Homicidij cum qualitate.

PRO

Fiſco.

Summarium.

ROMÆ, Typis R.Cam. Apoſt. 1698.

Romana Excidij

Ill.me & Reu.me Dñe. DEplorabile Excidium totiùs Familię de Comparinis ſequutum in hac Alma Vrbe nocte diei ſecundæ currentis menſis Ianuarij, & ſanguis effuſus clamat vindictam aduerſùs Delinquentes de terra apud Deum; Et nos, vt Munus, quo fungimur, adimpleamus operæ pretium duximus hìc fideli calamo ſeriem facti recenſere, ex qua Domini mei Iudices agnoſcere faciliùs valeant, quænam iura pro reſolutione Cauſæ, & pœnæ Delinquentium ſint eidem facto applicabilia, iuxta monitum *Textus in leg. final. in princip. ff. de iureiuran.* & quia, vt ait *Barboſa axiom. iur. axiom. 93. num. 1.* ſicut ex facto Ius oritur, ità ex facto Ius moritur.

Facti ideo ſeries ità ſe habet, Guido Franceſchinus de Ciuitate Aretij in Vxorem duxit Franciſcam de Comparinis, cui pro Dote inter cætera promiſſa fuerunt nonnulla bona Fideicommiſſo ſubiecta à Petro, & Violante Iugalibus de Comparinis, qui eamdem Franciſcam vti filiam in domo educarunt, & vti talem etiam in Matrimonium collocarunt; Cùmque prædicti Petrus, & Violantes nullos alios haberent filios, relicta habitatione Vrbis ad habitandum in domo Franceſchini ſita in Ciuitate Aretij ſe contulerunt, vbi per aliquod temporis ſpatium inſimul cohabitando in pace perſeuerarunt; Sed vt ſæpe accidere ſolet inter Amicos, & Coniunctos, ortæ fuerunt contentiones, ac iurgia, ob quæ præfatus Petrus, & Violantes è domo, & à Ciuitate Aretij receſſerunt, & in Vrbem reuerſi fuerunt; Interim creſcente flamma accenſi odij, introducta fuit lis ſuper Dote promiſſa, & à Petro Comparino denegata, eo ſub prætextu, quod Franciſca verè non eſſet filia ab eodem Petro, & Violante genita, ſed vti Partus ſuppoſitus fuerit recepta, ac educata, & quod proinde idem Guido, & Franciſca ad ſucceſſionem bonorum Fideicommiſſi aſpirare nun poſſent; At licèt ſuper hoc Articulo Franceſchinus fauorabilem reportauerit Sententiam, attamen cùm pro parte Petri Comparini fuerit ab ea appellatum, agnouit Franciſca ſe malè in domo Viri ab eo tractatam, & ob id curauit è domo ipſius Viri recedere, prout cum auxilio, & ſocietate Canonici Caponſacchi, vt ſupponitur, Affinis eiuſdem Franceſchini, fugam arripuit, ſed habita per per eumdem Franceſchinum notitia de Vxoris

fugà, illam insequens fuit assequutus in Cauponam Castri Noni, vbi adeundo Gubernatorem dicti Loci curauit committi capturam, & Vxoris, & Canonici, prout sequuta fuit; porrectaque deinde querela introductum fuit Iudicium Criminale in hoc Tribunali Gubernij Vrbis in quo fabricato Processu, & auditis pluries, tam oretenus, quàm in scriptis Procuratoribus vtriusque Partis, resolutum fuit ob defectum probationis Adulterij dictum Canonicum relegandum in Ciuitate Vetula, & dictam Franciscam in Conseruatorio retinendam; Verum quia pro parte de Comparinis prætendebatur subministrationem alimentorum in Conseruatorio ad Franceschinum spectare, & pro parte Franceschini dicebatur ad Comparinum pertinere, Illustrissimus, & Reuerendissimus Dominus Gubernator habito priùs consensu Abbatis Pauli Germani fratris dicti Guidonis & Procuratoris in Causa, domum de Comparinis eidem Franciscæ pro tuto, & securo carcere sub fideiussione assignauit.

Quibus controuersijs, tam in iudicio ciuili, quàm in criminali pendentibus, necnon super separatione Thori intentata pro parte dictæ Franciscæ vxoris, idem Franceschinus de prædictis vindictam sumere machinabatur, & pro eius prauæ voluntatis executione, coadunatis Dominico Gambassino Florentino, Alexandro Baldesco de Territorio Ciuitatis Castelli, Francisco Pasquini, Antonij de Marchionatu Montis Aguti, Blasio Agostinello de Ciuitate Plebis Incola Villæ Quaratæ, & eisdem accommodatis gladijs, & stylo per Bullam Alexandri Octaui prohibitis, ingressus fuit Vrbem in societatem prædictorum Hominum, & habito accessu ad domum de Comparinis hora prima noctis curauit sibi aperiri Ianuam sub simulatione deferendi epistolam Violanti transmissam à dicto Canonico Capo nsacca in dicta Ciuitate Vetula commorante, proùt aperta Ianua habitationis per dictam Violantem, ipsam statim aggressi fuerunt, præfati Guido, & Socij à quibus cum gladijs prædictis fuerit iugulata statim occubuit, prout etiàm Petrus paritèr iugulatus ab hac vita migrauit, Franciscà verò curauit subtus lectum se abscondere, sed reperta, & pluribus vulneribus affecta, tunc, sic Deo permittente, non remansit extincta, licèt post paucos dies etiam ipsa decesserit, itaùt potuit hoc immane scelus reuelare; de quo habita notitia per Illustris. D. meum Vrbis Gubprnatorem peruigili attentione curauit, vt ab exequutoribus extrà Vrbem Malefactores insequirentur, prout eadem nocte reperti in Cauponà Merlucciæ, cum armis igneis, & gladijs

dijs prohibitis etiam ſanguinolentis, ductiſque ad Carceres, & conſtructo contra eos Proceſſu fuerunt ſuper crimine examinati, de quo aliqui ipſorum ſunt confeſſi, alij verò quamuis ſint negatiui ſuper tractatu, ac ſcientia de occidendo omnes de familia, attamen contrà eos, non ſolùm vrgentiſſimæ præſumptiones, ſcientiæ, & tractatus prædicti, ſed etiam grauiſſima ex eodem Proceſſu reſultant indicia, itaùt per DD. Defenſores, minimè impignari, ac controuerti poſſint,

Hinc cum hæc cauſa ſit proponenda prò reſolutione capienda, credimus nullam ſubſiſtentem elici poſſe defenſionem prò parte Delinquentium, ad euadendam pœnam vltimi ſupplicij quoad confeſſos de crimine, & ad eximendum negatiuos à rigoroſo vigiliæ tormento; Licèt enim quæſtio ſit valdè à DD. agitata an maritus occidens vxorem adulteram non incontinenti, ac in adulterio deprehenſam, ſed ex interuallo à pœna ordinaria, *leg. Cornel. de Sicar.* excuſari de beat, dùm aliqui prò excuſatione mariti affirmatiuam opinionem profitentur, vt videre eſt apud *Giurb. conſ.* 86. *Gizzarel. dec.* 18. *Muta dec Siciliæ* 61. *Bertazzol. conſ crim.* 206. *& conſ.* 356. *Sanfelic. dec.* 537. *Pratus ad Paſchal. de patr. poteſt. part.* 3. *c.* 6. *verſ. hinc Cabal. reſol. crim. caſ.* 300. qui omnes Doctores ad mitigandam pœnam marito, qut ex intesuallo vxorem occidit, ea ratione mouentur, quia cum cauſa honoris ſemper cor præmat difficile eſt temperare iuſtum dolorem, ob quem incontinenti dicitur facta honoris defenſio cum comodè fieri poſſit.

Alij verò quamplures negatiuam tuentur firmantes maritum occidentem vxorem alitèr quàm in adulterio, & in actibus Venereis deprehenſam pœna ordinaria puniendum, ità *Angel. de Maleſic. verbo, che hai adulterato la mia Donna nu.* 1. *verſ. multò minùs*, *Clar. in* § *homicidium num.* 48. *&* §. *fin. quæſt.* 89. *in fin. Gomez. ad leg. Tauri* 80. *num.* 68. *Couar. in epit. Iur. Canon.* 2. *p. cap.* 7. § 7. *num.* 3. *Farinacc. quæſt.* 121. *nu.* 111. *& ſeqq. & in conſ.* 141. *per tot.* vbi contrijs reſpondet *& D. Raynald. cap.* 2. §. 4. *num.* 155. *& cap.* 7. *in rubr. nu.* 118. *& ſeqq.* vbi hanc opinionem dicit veriorem, & magis Reipublicæ proficuam, nec ab ea in indicando recedendum eſſe *Sanz. de regim. Valentiæ cap.* 8. §. 8. *num.* 63. *&* 64. vbi qnod apud illum Senatum pluries indicatum fuit non excuſari maritum ex adulterio legitimè probato, ſi ex interuallo occi-

dat vxorem, ea ratione, quia olim ex lege Romuli maritus vxorem occidere potuit, ſed lex Iulia permiſit tantum occidere adulterum vilem, vt probat *Anton. Matthæu de criminibus tit. 3. de adulter. cap. 3. num. 13.*

Attamen in hac noſtra facti ſpecie credimus verſari extra difficultatem propoſitæ quæſtionis.

Quia Doctores pro contraria opinione ſupracitati procedunt, & intelligi debent quoties agitur de marito, qui abſque exceſſu legis, & nullis concurrentibus circumſtantijs, & qualitatibus aggrauantibus, iuſtoque dolore tantum motus vxorem occidit, ſecus autem, quando, vt in noſtro caſu adeſt exceſſus, & contemptus legis, ac concurrunt circumſtantiæ, & qualitates aggrauantes, prout cum hac diſtinctione iuxtà communem praxim eſſe procedendum teſtatur *Laurent. Matthæu de re crim. contr. 12. num. 29.* poſtquam firmauerit maritum eſſe excuſandum à pœna ordinaria. & mitius eſſe punendum, ità ſubiungit, *ex quibus praxis communis ea eſt, vt effectus doloris perpendatur, & ſolum puniatur exceſſus, ità vt ſi adeſt doli ſuſpicio in forma occidendi, vt puta circumſtantia tendens ad proditionem, pœna aggrauetur.*

Circunſtantiæ verò aggauantes, qnæ in noſtro caſu concurrunt ſunt plures, & adeò graues, vt quælibet ex ipſis eſt ſufficiens ad pœnam vltimi ſupplicij imponendam, & ad reddendum crimen qualificatum.

Prima enim eſt coadunatio hominum Armatorum, pro qua ſecundum Bannimenta huius Gubernij Vrbis imponitur pœna vitæ, & confiſcationis Bonorum illi, qui eſt caput coadunationis, etiamſi coadunati ſint ſolum quatuor, vt legitur in *cap.* 82. eorumdem Bannimentorum, quæ circumſtantia, & qualitas eludj nequit auctoritate aliquorum Doctorum aſſerentium lfcitum eſſe Marito Vxorem occidere coadunatis etiam Hominibu, , quia prædicti Doctores loquuntur, & intelligi debent in caſu in quo licitum eſt impunè Marito occidere Adulterum, & Vxorem in actu Adulterij, vel in Domo ipſius Mariti, ſecùs autem ex interuallo, & extra Domum ipſius Mariti ad tradita per *Anton. de Ball. tract. var. delitt. diſpenſ. caſ. 1. num. 65.* vel procedere fortè peſſent, ſi alio modo non potuiſſet Adulterum, & Vxorem occidere, prout ſentiunt omnes Doctores, qui poſſunt fauore Mariti adduci, quod non eſt dicendum in caſu iſto, dùm Franciſchinus in ſequendo Vxorem armis igneis munitus poterat vin-

vindictam ſumere in Caupona Caſtri noui, vbi recurſum habuit ad Iudicem, elegitque viam Iudicialem pro punitione vxoris, & Canonici cum quo illa aufugit; vel demum procederent ſi minorem numerum Hominum coadunaſſet, ob quod, crimen conuenticulæ non conſtitueretur; Fortius quia non agebatur de committendo factum, vt diximus impunibile, & à lege permiſſum.

Non enim credimus poſſe per Dominos Defenſores prætendi, quod Maritus impunè occidere valeat Vxorem Adulteram ex interuallo, dùm omnes Doctores qui adduci poſſunt fauore Mariti eximunt quidem ipſum à pœna ordinaria non autem ab extraordinaria, prout videri poſſunt adducti per nos ſupra in §. *Hinc cum Cauſa*; ſi ergò in caſu noſtro Maritus committit delictum punibile, quomodò poteſt coadunare numerum Hominum conuenticulam formantem, & à Bannimentis prohibitam, abſque incurſu pœnę ab ipſis comminatæ?

Secunda qualitas, ac circumſtantia eſt delatio armorum contra formam Conſtitutionis Alexandri VIII. quæ ad totum Eccleſiaſticum Statum extenditur, ad cuius comminatæ, pœnæ excuſationem, minùs allegari poſſunt Doctorum auctoritates maritum excuſantes, ſi cùm Armis prohibitis occidat adulterum, & vxorem, quia vltrà reſponſionem per Nos datam in explicatione primæ circumſtantiæ coadunationis, ac conuenticulæ, quod illæ ſcilicèt procedant, & intelligi debeant in caſu à lege permiſſo, & impunibili, dicimus applicari minimè poſſe reſpectu Armorum de quibus agitur, dum d. Conſtitutio non ſolum prohibet delationem, ſed etiam retentionem, fabricationem, & introductionem eorum in Vrbem, & Statum Eccleſiaſticum ſub *pœnis rebellionis*, & *Criminis læſæ Maieſtatis*, & quatenus etiam verſaremur in caſu à lege permiſſo intelligendæ eſſent Doctorum auctoritates de Armis, quorum prohibita eſt delatio, non autem retentio, & introductio ſub quouis prætextu etiam Iuſtitiæ, vt habetur in eadem Conſtitutione §. 1. ibi: *Aut quo quouis etiàm militiæ, aut executionis iuſtitiæ prætextu deferre, minuſque in Domibus, aut alibi retinere*: & in §. Ad hæc, prohibet etiàm introductionem ibi: *Retentionem Domi, in in Apotecis & alibi, introductionem in Statum Eccleſiaſticum, fabricationem &c.*

Si ergò ſub prætextu Iuſtitiæ prohibita eſt retentio, & introductio

ductio huiuſmodi Armorum, ridicula eſſet prætenſio Franceſchini, ſibi licuiſſe, cùm dictis Armis accedere ad vrbem, & Domum vxoris ad vindicandam ex interuallo ptętenſam honoris offenſionem; Certiùs quia delictum huiuſmodi Armorum eſt graue, & de per ſe pœna capitali puniſtur, vt probauimus, quo caſu ſecuto delicto, ſi maior eſt pœna aſportationis, quàm delicti, accipitur pœna grauiori, quæ leuiorem abſorbet, *Bart.in l.numquam plura nu.4. ff. de priuat.delict.Gloſ.in l.qui de crimine, verbo plurima C. de Accuſat.Cacye.latr.deciſ.*18.*num.*2.*& per tot.Cabal.caſ.*100.*n.*12. 13.*& 14 *Giurba conſ.*26.*num.*1.*conſ.*82.*nu.*41. vt grauius puniatur delinquens, *Cabal dicto caſu num.*13.*&* 14. *Cartar.de pœn.Innocent.art.*2.*num.*101.*Farinac.qu.*22.*n.*22.*& qu.*108-*num.*166.*Sanfelic.deoiſ.*43.*num.*2.*&* 3. Jalijque quos allegat, & ſequitur *oril.ad Capan.reſol.*1.*num.*41.

Tertia circumſtantia eſt, quia Franceſchinus cùm Hominibus prædictis homicidia patrauit in Domo, ac habitatione propria de Cõparinis, quò fit vt homicidiũ in Domo occiſi commiſſum, dicatur qualificatum, cùm Domus debeat eſſe tutum ſui Domini refugium *l.plerique*, & ibi *Bart.& alij ff. de in ius vocan.Spad.conſ.*107.*num.*4.& quia d.Franciſchinus ingreſſus fuit cùm mutatione veſtimentorum. quo caſu Homicidium dicitur commiſſum ex Inſidijs *Farinac. qu.*126.*cum alijs adductis per eumdem Spad.loc.cit. num.*5.*præſertim de nocte, vt conſiderat Cabal.caſ.*31.*num.*15.*quem allegat. & ſequitur Spad.d.conſ.*107.*n.*3.*& prius in conſ.*101.*n.*6.

Quarta qualitas, & circumſtantia eſt, quia dicta Franciſca erat ſub poteſtate Iudicis, dum fuit eidem, vt diximus in narratione facti, aſſignata Domus cum fideiuſſione de habendo illam pro tuto & ſecuro Carcere, & ſic erat in fortijs Curiæ, vt volunt *Gramat.deciſ.*14.*num.*4.*& alij allegati per Farinac qu.*30.*nu.*52. *&* 57. præſertim quando agitur fauore illius, qui in fortijs Curiæ exiſtit, quidquid dici poſſet quando agitur de eius præiudicio; ideoque compertum eſt in Iure, nec minus Bannitum capitalem in Fortijs Curię exiſtentem occidi poſſe, *Bart.in l.*3.*§. transfugas ff.ad l.Corn.de Sicar. & in l.illaqueum ff. de acquir. rer. dom. l. libertas ff. de Stat.Hom. Nell.de Bannit part.*2.*qu.* 28. *cum alijs adductis per Oril. ad Campan.obſeru.*24.*num.*31.

Sed ceſſare videtur omnis diſceptatio, dum ex proceſſu reſultat dictum Franciſchinum acceſſiſſe ad Domum prædictam vna cum hominibus coadunatis non animo, & intentione

ſolum

ſolum occidendi Franciſcam vxorem , ſed etiam occidendi Petrum , & Violantem , quos vt ipſe fatetur, odio graui proſequebatur , propter litem motam , & quia prædicti Iugales inſtarent apud Franciſcam . vt mortem viro, & Cognato veneno pararet , ac etiam quia retinerent in Domo eius Vxorem, vt magis in continuatione adulterij eius honor offenderetur , quia vltrà quod , vt ſuprà dicimus Franciſca fuit auctoritate Iudicis in dictam Domum repoſita cum conſenſu fratris Germani eiuſdem Mariti , non intrat quæſtio an ſit permiſſum à lege occidere Coniunctos , Amicos , & Domeſticos Vxotis adulteræ , etiamſi Maritus illos ſuſpectos habæret de permiſſione, vel aſſenſu præſtito Vxori adulterium committenti , cum ſpecialia , ac priuilegia conceſſa Marito, aduerſus Vxorem non ſint multiplicanda, ac extendenda,ſed ſtrictè interprætanda *cap. non poteſt, de præbendis in 6. cap. fin.de fil.preſbyt. eod. lib.* quod procedit non ſolum quando agitur de præiudicio tertij , ſed etiam ſi agatur de ſolo præiudicio Eiſci per *Text.l. 1. in fin. ff.de Iur. Imm.* & quod in præciſis noſtris terminis non debeat fieri extenſio de perſona ad perſonam *ex Couar.de ſponſ.p.2.cap.7. §. 7. & ex Angel. in verbo che hai adulterato n 64. tenuit Antonius de Ball. d.tract.variar lib.3.de litt.diſpenſ.Caſ. 1.nu.63. & 64.* quamuis nos verius affirmare poſſimus huiuſmodi aſſertionem dicti Franceſchini eſſe calumniosè mendicatam , dum in articulo mortis eadem Franciſca proteſtata fuit in damnationem Animæ ſuæ non offendiſſe honorem mariti cui potius atteſtationi credendum venit . cum moribundus non præſumatur immemor ſalutis æternæ ad *Text.in l.fin.C.ad l.Iul.repetund. cap.Sancimus 2. qu.2.*

Cæteræ vero Cauſæ , quæ ab ipſo Franciſhino addúcuntur poſſunt quidem , quatenus veræ eſſent , dem onſtrare odium, ac inimicitiam inter ipſum , & dd. Iugales, vertentem , & ſic ad probandam in eo cauſam præmeditatæ necis eorumdem, non verò ſufficientem ad ipſum excuſandum à pœna ordinaria mortis , quàm omninò exigit homicidium præmeditatum iuxtà *Text.in l. 3. §. Patiatur Cod.de Epiſc. Aud. & in §. Lex Cornelia inſtit.de Publici Iudic.& in l.pen.§. Quiaalias Perſonas ff ad l.Pmp.de Paricid.& in l.eiuſdem in fin ff.ad leg.Corn. de Sycar.& ex Geneſi cap.9.verſic.6.& Exod.cap.21.& Deuteron.cap.19.verſ.13.per quæ Iura idem firmat Godofred.Aba. uo ir prax Criminal.§.homicida num.4.& 5.Giurb.conſ.Crimin. 2.num.*

2.*num.*38.*& conſ.*63.*num.*2.*Clar.qu.*30.*verſ.Punctus eſt*,*Farinac.qu.*119.*num.*12.*& ſeqq.* ea ratione, quia leges prohibent vindictam, priuatam hoc eſt illam, qnam Carentes publico miniſterio propter ſua odia in interficiendis hominibus, vel aliter lædencis ſibi vſurpant, vt habetur *in leg.*14.*Cod.de Iudic.& l.*38.§.8.*ff.ad leg.Iul. de Adulter. cùm alijs Iuribus adductis per Dominum meum* Raynaldum *cap.*7. *in Rubrica num.* 122.*&* 123. *vbi num.* 24. ſubdit quod non ſolum in homicidio appenſato imponenda eſt pœna ordinaria contrà ipſum occiſorem, ſed etiam contrà omnes alios, qui data opera, aſſiſtunt, & ad hnmicidium patrandum concurrunt opera, ope, vel conſilio ex claro §.*homicidium verſ.aut verò ſunt plures Farinac.qu.*96.*num.*38.*& ſeqq.conſ.*138.*num.*27.*Cabal.reſol.Crimin.*192.*num.*1.*& ſeqq.*

Franciſcus de Gambis *Fiſci, & Reuerend. Cam. Apoſt. Procurator* Generalis.

Illuſtriſs. & Reuerendiſs. Domino

VRBIS

GVBERNATORE

In Criminalibus.

Romana Excidij.

PRO

Fiſco.

CONTRA

D. Guidonem Franciſchinum, & Socios.

Facti, & Iuris.

Domini Procuratoris Fiſcalis Generalis.

Romæ, Typis Reu. Cam. Apoſt. 1698.

Romana Homicidij cum qualitate.

Ill.^me & Reu.^me Dñe. QVoniam (vt auditum fuit) præcipua defensio Domini Franceſchini inquiſiti conſiſtit in prætenſa Cauſa honoris, ob quam motus fuerit ad delinquendum Fiſci propterea partes ſunt huius inſubſiſtentiam oſtendere, vt debita pœna plectatur adeo atrox, & enorme delictum.

Examinanda itaque aſſumo fundamenta, quibus aſſerta honoris Cauſa inniti poteſt, fugam ſcilicet infelicis Vxoris à Domo Viri, vna cum Canonico Caponſacco, cum quo in Hoſpitio Caſtri Noui capta fuit, & prætenſas litteras amatorias in Proceſſu ſuper dicta fuga, & deuiatione inſertas ex quibus prætenſa Vxoris inhoneſtas deſumitur cum alia cumulata in dicto proceſſu, ſint omninò læuia, vel æquiuoca, vel non ptobata, vt etiam colligi poteſt ex dimiſſione Francitcæ Vxoris cum ſola cautione de habendo Domum pro Carcere, & D. Canonici cum triennali relegatione in Ciuitate Vetula, quæ vtique oſtendit nullam fuiſſe à Fiſco in eodem Proceſſu acquiſitam legitimam pròbationem inhoneſtatis, & prætenſæ violationis fidei coniugalis, de qua fuerat per inquiſitum delata.

Et quidem ex defenſionibus tunc factis, immò ex ipſo Proceſſu luculenter apparuit iuſtiſſima cauſa, ob quam infelix Puella mota fuit ad arripiendam fugam, à Domo Viri, vt ad proprios lares remearet, & apud Parentes quietam, & tutam vitam traduceret. Notoriæ quippe ſunt altercationes ſtatim exortæ ob rei familiaris anguſtiam inter dictos miſerrimæ Puellæ Parentes, & Inquiſitum, eiuſque matrem, & fratres ijſdem fruſtra lugentibus ſe fuiſſe deceptos ſub ſpecie non infimæ opulentiæ ob ſuppoſitum annuum redditum ſcut. 1700. qui prorſus inſubſiſtens detectus fuit adeout dum moram in Domo Sponſi inquiſiti traxerunt in Ciuitate Aretij adeò malè ab ipſo eiuſque Conſanguineis habiti fuerint, vt poſt paucos menſes ab eadem recedere, ac ad Vrbem redire coacti ſint totoque tempore, quo conuixerunt continuè inter ipſos viguerint contentiones, & quærimoniæ, ob iuſtum dolorem deceptionis, quam paſſi fuerant excitatæ, vt conſtat ex Epiſtolis Abbatis Pauli Franceſchini eas præſupponentibus ad defenſam ponderatis per D. Procuratorem Charitatis, & indicantibus malum animum, vſque tunc aduerſus infelices Parentes conceptum, & ſignanter in illa ſcripta 6. Martij ibi: *Torno à ſcriuere à V.S. che non voglio imitarlo nel modo di ſcriuere non eſſendo da par ſuo ſeminare certe parole nelle lettere, che meriterebbero riſpoſte di fatti, e non di parole, e queſte ſono offenſiue à ſegno, che le conſeruo per ſuo rimprouero, e mortificatione:* & infra ibi: *che ſe lei ci darà de guai (che non credo mai) non ne reſterebbe eſente ne pur lei:* ſufficiens autem ex Epiſtolis reſultat probatio, vt monent *Gabriel tit. de confeſs. concluſ. 1.*

cluſ.1. num.54. Farinacc. conſ. crim. 24. num. 21. Matth. Sanz. de re crim. contr.28. num.26. & ſeq. & contr.77. num. 2. Sperell. deciſ. 69. num.4.

Et licet ipſę non parificent qualitatem altercationum, tamen, vltra quod aliquæ præſeferunt quærimonias adeò excreuiſſe, vt amaritudines in odium excreſcerent, vt conſtat ex Epiſtola ſub die 12. Februarij 1694. ibi: *ma ſentendo dall'vna, e l'altra parte creſcere fra loro l'amarezze per non dir gl'odij*: facilè fuiſſet Inquiſito, & D. Abbati eius fratri exhibendo literas eidem ſcriptas, vt apparet ex tenore dictæ Ediſtolæ ibi: *Io però che ſento che il nemico di Dio habbia meſſe amarezze tra loro, è conueneuole, che io adempiſca con V.S. al debito di riſpoſta*: oſtendere quærimonias fuiſſe iniuſtas, vel ab ipſis excitatas, quas cum non exhibuerint, vrget contra occultantem præſumptio veritatis earumdem, & iſtæ Cauſæ ob quam conquærebantur, & altercabantur, vt in ſimilibus terminis firmauit *Rota in Romana, ſeu Neapolitana liberationis à moleſtijs 27. Februarij 1690. §. eo magis coram Eminentiſſimo Cardinali Caccia, & in Romana Pecuniaria ſuper exhibitione 21. Iunij 1694. §. clarius coram R. P. D. Muto.* Quæ tamen ſpecificatio peſſimorum tractatuum erga Parentes, quibus ex conuentione dotali ſubminiſtranda erant alimenta habetur ex depoſitione Ancillæ data in *Summ. num.1.* quæ vtique ſi legentium commiſerationem extorquere apta eſt, multo magis credibile redditur ex huiuſmodi peſſimis tractationibus ſummopere exaſperatum fuiſſe animum miſerrimæ ſponſæ ſuos Parentes ita vexari fruſtra lugentis, imò etiam lugere impeditæ.

Reditus ad Vrbem eorumdem Parentum quantò, & quidem iuſtiſſimo dolore affecerit miſerrimam Puellam 15. ætatis annum non excedentem, omnibus notum eſſe poteſt; Ea quippe omni auxilio deſtituta, maritali ſeueritati expoſita remanebat, ob quam ſe quotidie in vitæ diſcrimine conſtitutam timebat, & fruſtra tentato recurſu ad Reuerendiſſimum Epiſcopum, & D. Commiſſarium *Summ. num.2.* fruſtraque interpoſitione nobilium virorum, qui prius etiam inutilis euaſerat, vt conſtat ex dicta Epiſtola 6. Martij ibi: *Ma che rimedio poſſo darui io, quando tanti Caualieri amoreuoli d'ambe le parti ſento ſi ſiano frameſſi per comporli, e non li è ſortito*: Non aliud ſibi remedium ſupereſſe putauerit, quam fugam arripiendi e domo Viri, & Patrios lares repetendi; Quæ propterea vtpotè executioni demandata pro euadendo vitæ diſcrimine, nullum inhoneſtatis, & violatæ coniugalis fidei præbere valet indicium, cum ad cauſam omnino licitam potiùs quam ad criminoſam ſit referenda, vt per *Text. in cap. in pœnis de regul. iur. in 6. monent Honded. conſ.105. num.60. lib.1. Crauet. conſil. 8. num. 2. & conſ.319. num.1. Andreol. contr.66. num. 24. Maſcard. de probat. concluſ.814. num.3. vol.2. Conciol. allegat.87. num.24.*

Vrgente etiam alia Cauſa ob quam Patrios lares repetere ſtuduit, Paternæ, ſcilicet infirmitatis, de qua in epiſtola, in qua inſinuauit non

non expectandam esse societatem D. Gregorij Quilichini sese etiam circa hoc remittendo D. Canonico, vnde bene inferri potest, quod ex causis licitis de fuga agebatur.

Nullatenùs verò fidendum est Epistolæ ab eadem Sponsa conscriptæ D. Abbati Franceschino, in qua illi gratias agit quod ipsam Matrimonio iunxerit cum inquisito eius fratre, ac profitetur, quod post Genitorum discessum omninò tranquillam vitam ducebat cessante illorum peruersa seductione, quæ ipsam à Viro alienam reddebat, & detegit pessimum consilium ipsi traditum totam Domum perdendi. Ipsa siquidem Sponsa ingenuè in suo constituto fatetur eam conscripsisse, vt Inquisito obtemperaret eo designante Apices, ipsaque calamum super inducente, vt ex particula constituti eiusdem data in *Summario num.3.* & sanè sola lectura dictæ Epistolæ talem inserit horrorem, vt incredibile sit, quod infelix Puella, nisi metu per virum illatum coacta talia scribere potuerit in perniciem, & detractionem propriorum Genitorum, ad quem effectum eadem datur in *Summario numero 4.*

Iustior etiam euasit timor ob quem mota fuit ad fugam capiendam infelix Puella ex mota per Patrem Inquisito lite super nullitate constitutionis dotis, vtpote factæ ex falsa causa, quia credebat eam filiæ promittere, qualem non esse agnouerat ex reuelatione per Matrem facta, quod ad decipiendum Virum, & arcendos eius Creditores partum suppositiuum esset; Cum enim omnia bona fuissent in dotem assignata, & quidem conspicui valoris inspecta qualitate personarum mota super illis per Soccrum controuersia vtique grauissima, & Capitalis exorta timeri poterat inimicitia per quam coniugalis pax, iam diù præcedentibus altercationibus turbata, recrudescentibus odijs, prorsus eliminata remaneret. Hunc enim effectum parere lites super considerabili quantitate, multoque magis super toto asse motas quotidiana experientia docet, & tradunt *Gramaticus cons.46. num.4. Cravett. consil.75. num.11. Soccin. Iun. cons. 73. num. 14. volum.2. Decian. tract. Criminal. lib.3. cap. 25. num. 56. & 57. Vermigliol. consil.321. num.5. Farinac. quæst.49. num. 2.*

Adeoque cum iustus timor consideretur pensatis per prudentem Iudicem circumstantijs Personarum, & temporis, vt ex *Text. in l. metus autem Causa ff. ex quibus caus. maior Glos. in cap. Pen. de his, quæ cui metusu. Caus. monent Faris. consil. 53. num. 60. lib.4. Menoch. de arbitr. cas. 135. num.2. Mascard. de probat. concl.1051. num. 21. Cartar. decis. Criminal. 72. num. 75. optimè Mogolon. de metu cap. 2. §. 7. num. 1., & cap. 7. num. 1. vers. tum quia*; Affirmandum omninò in casu nostro est eas tales reputandas, vt non modo Puella teneræ ætatis, qualis erat infelix Sponsa omni auxilio destituta, & exposita seueritati Viri, quæ illam igneo breuiori sclopulo appetierat mortem ipsi minando ob leuissimam suspicionem, sed quæuis constantissima fœmina se

in continuo vitæ discrimine constitutam suspicari posset, sibique præcauendi necessitatem agnosceret, quod si quæcumque Causa etiam opinata sufficeret ad illam excusandam, vt per *Text. in l. habitatores §. final. ff. locat. firmat Mogolon. de metu cap. 7. num. 1. Farinac. quæst. 125. num. 63., & 64. & num. 196. D. Canon. Raynald. in sintax. rer. crimin. tom. 3. cap. 25. §. 4. nu. 34.* vbi quod sufficit videre signa, & actus manifestæ voluntatis, vel præparamenta. Quantò magis excusabilis, & commiseratione digna censeri debet dum ideò vrgens, & vndique verificata concurrit Causa, ob quam ad fugiendum mota fuit, vt aduertit *d. Mogolon. tit. 2. §. 6.* Vbi quod solus visus armorum, licet habens eis non vtatur, neque ea euaginet est iuxta causa metus productiua.

Nec inhonestatis, & violatæ coniugalis fidei præsumptio insurgere valet ex societate D. Canonici Caponsacchi, cum quo fugam arripuit, ob quam ipse fuit ad triennalem relegationem in Ciuitate Vetula damnatus. Cum enim, vt dictum est, infelix Puella esset omni auxilio destituta, propriæque ætatis, suique sexus, & status ratio non pateretur, vt sola, vel in societate alicuius vilis mulierculæ periculoso itineri se committeret, ne domestica discrimina fugiendo, incautè se grauioribus periculis exponeret, prout contingere potuisset, si per virum sola fuisset in itinere deprehensa, nec alium tutiorem inuenire potuerit Comitem, quam ipsum D. Canonicum amicitia coniunctum cum D. Canonico de Comitibus, qui licet familiaris, & consanguineus inquisiti eius statum magna commiseratione prosequebatur, tutiùs existimauit cum eo fugam arripere, quem prouidum, & aptum ad illam ad optatum exitum perducendam censuit, quam aliter illam exequi cum maiori discrimine; Quæ propterea necessitas, & prudens electio minoris mali omnem prætensæ inhonestatis suspicionem excludit, vt tradunt *Bald. in l. filium num. 1. ff. de his, qui sunt sui vel alien. iur. & in l. 1. num. 35. C. de ijs, qui accus. non poss. Menoch. de præsump. lib. 6. præsumpt. 54. num. 22. & 23. de arbitr. lib. 2. cas. 89. num. 23.*

Eaque vlterius excluſa remanent ex modo, quo fuga fuit executioni demandata iter ad Vrbem arripiendo recto tramite, & cum maxima celeritate. Si enim expendendæ libidinis causa cum eodem Canonico Amasio (vt alias fuit eidem obiectum, & modo forsan animosiùs ad affectandam honoris Causam repetetur) infelix Puella fugam arripuisset, vel moram traxisset in aliquo loco extra publicam viam in quo per inquisitum deprehendi non posset, vel non accessisset cum tanta celeritate ad Vrbem, nisi verè id peregisset Patrios lares repetitura, in qua vitæ, atque honoris securitatem assequi sperabat. Nimis quippe imprudens fuisset Amasij consilium traducendi Vxorem à Domo Viri ad locum, quo suam cupiditatem explere non

non poſſet, quæ ſola inueriſimilitudo ſufficeret ad oſtendendam veritatem Cauſæ per Vxorem in conſtitutis adductæ, quod pro vitando Vitæ diſcrimine in quo ſe conſtitutam timebat fugam arripuit, vt ad Patrios lares ſe conferret opem præbente, & aſſociante Canonico ex mera commiſeratione, & omninò ſalua honeſtate; veriſimilitudo ſiquidem ſemper eſt potiſſimè ſpectanda ad arguendum delictum, vel illud excludendum, vt tradunt *Farinac. de falſ. & ſimul. quæſt.153. num.176. & ſeqq. & conſ.60. num.28. & 31. Caball. reſol. crimin. caſu 199. num.35. Conciol. reſol. crimin.27.num.2. & ſeq. Vermigliol.conſ.31. num.5, & conſ.266. num.10.*

Minuſque ſubſiſtit alterum fundamentum aſſertæ Cauſæ honoris, quod alias fuit per inquiſitum conſtitutum ſuper prætenſis litteris amatorijs,quæ per miſerrimam Puellam ſcr,ptæ prætendebantur Canonico, necnon ex quibuſdam ab eo ſcriptis, repertis in Latrina Hoſpitij Caſtri noui in quam præiectæ aſſerebantur ad illas occultandas; Vltra reſponſiones quippe tunc rraditas per D. Procuratorem Charitatis, non probatæ identitatis caracteris, & incertitudinis, cum non appareant, cui ſint directę, quæ forſan admiſſæ fuerunt cum nulla pœna fuerit eidem Puellæ irrogata, & ſimpliciter dimiſſa ſit cum cautione de habendo Domum pro Carcere, quamuis inſpecto eorum tenore, præferre videantur, nimiæ benеuolentiæ ſignificationem, tamen ea potuit per eamdem fingi ad alliciendum D. Canonicum reluctantem, vt ipſa fatetur in ſuo conſtituto ad eì auxilium præbendum in executione præmeditatę fugæ ipſam ad Vrbem aſſociando, conſtat enim Epiſtolas fuiſſe ad hunc finem exaratas *Summ. num.5.* Adeoque commiſſeratione digna exiſtimari debet miſerrima Puella omni auxilio deſtituta, & in diſcrimine vitæ poſita, ſi blandis, & forſan amatorijs verbis allicere tentauit D. Canonicum, quem aptum credebat ad ei opem ferendam, nec ex dd. Epiſtolis ad eumdem fugæ finem conſcriptis maius violatæ pudicitiæ ſumi valet argumentum, quam ex ipſa fuga; nec nouum eſt caſtiſſimas fęminas ſimilibus artibus quandoque vti ad licitum finem vt in ſacris paginis, feciſſe legimus Iuditta ad decipiendum Holofernem, vt patriam liberaret. Id igitur facere potuit infelix Puella, vt mortis periculum euaderet abſque vlla inhoneſtatis nota.

Accedente præſertim confidentia, quod habebat, tum propriæ continentiæ, tum integritatis eiuſdem D. Canonici de qua deponit Teſtis de auditu à D. Gregorio Guillichino pariter conſanguineo, (vt mihi ſupponitur) inquiſiti in dicto Proc. per Fiſcum ad inſtantiam inquiſiti tunc aderentis examinatus ibi: *Il Signor Gregorio all'hora mi ſoggiunſe il Signor Canonico vi và per buon fine, e perche ella ſe ne vorrebbe andare à Roma, e mi diſſe anche, che non ci poteua naſcere del male, perche frà loro non v'era male alcuno*: cuius profectò Teſtis depoſitio contra inducentem plenè

probat, vt tradunt *Farinac. conſ.* 120. *num.* 10. *Vermigl. conſ.* 500. *num.* 3. *D. Canon. Raynald. tom.* 2. *cap.* 23. §. 4. *num.* 26. *fol.* 112. Ac propterea cum nihil mali poſſet dicta infelix Puella ſuſpicari à ſocietate dicti D. Canonici, nec aliud remedium aptiùs haberet, vt ſuam præmeditationem exequeretur, tractatus habitus cum eodem per Epiſtolas excuſandus eſt, vtpotè ad hunc finem ordinatus, quamuis aliqua in illis legantur verba amatoria, quæ potiùs officioſa, & ad captandam beneuolentiam appoſita cenſeri debent, & ſemper explicanda ſunt iuxta intentionem proferentis, vt ex *Text. in cap. intelligentia, & cap. propterea de verbor. ſignific. monent Surd. conſil.* 431. *num.* 35. *cum alijs relat. per Molin. de rit. nupt. lib.* 3. *quæſt.* 85. *num.* 50.

Accedente inſuper participatione D. Canonici de Comitibus nobilis viri, & affinis D. Inquiſiti, & hunc tractatum promouentis, quem incredibile non eſt illius honori inſidiari voluiſſe, ſed tantùm ex cauſa commiſerationis infelicem Puellam ab imminenti mortis periculo eripere; Talis autem participatio elucet ex ipſis epiſtolis, quæ ab illo conſcriptæ prætenduntur.

Leuioris ponderis ſunt alia prætenſæ inhoneſtatis indicia deſumpta ex acceſſu D. Canonici ad domum Inquiſiti nocturno tempore ad effectum alloquendi cum vxore occiſa, deoſculatio eiuſdem in itinere, de qua deponit Franciſcus Ioannes de Rubris Chiſij, vulgò *Caleſſe* Ductor, & prætenſa condormitio in eodem lecto in hoſpitio Caſtri Noui. Vltra defectum ſiquidem probationis reſpectu primi, vtpotè reſultantis ex dicto vnici tantùm Teſtis Mariæ Margaritæ de Contentis, quæ patitur releuantiſſimam exceptionem publici meretricij, & tanquam vnica nihil probat, vt reſpectu meretriciæ qualitatis monet *Text. in l.* 2. §. *lege Iulia, ibique Gloſ verbo palam ff. de teſtibus Marſil. conſil.* 102. *num.* 9. *Vermigliol. conſil.* 408. *num.* 1. *Crot. de Teſt. part.* 3. *num.* 46. *Pariſ. conſil.* 67. *num.* 80. *lib.* 3. *Maſcard. de probationibus concluſ.* 1362. *nnm.* 20. Et reſpectu vnicitatis, *Textus in cap. venien, & cap. licet vniuerſis de Teſt. Farinac. de Teſt. quæſt.* 64. *n.* 28. *&* 33. *Vermigl. conſil.* 146. *num.* 3. *D. Canonicus Raynaldus in Sintaſs. rer. crimin. tom.* 1. *cap.* 1. §. 10. *num.* 118. Cum talis acceſſus eſſet ordinatus ad licitum finem ſubtrahendi miſeram Puellam ab imminenti mortis periculo, eam ad patrios lares ducendo non eſt trahendus ad indicium illiciti commercij, cum ſola poſſibilitas ad hunc effectum ſufficiat, vt in bonam partem ſit ſumendus, vt per *Text. in l. merito ff. pro ſoc.* tradunt *Menoch. conſil.* 84. *num.* 75. *Surd. deciſ.* 58. *num.* 4. *Vermigliol. conſ.* 171. *num.* 27. *& conſil.* 397. *num.* 11. *Rota deciſ.* 106. *num.* 7. *par.* 2. *diuerſ.*

Maximè cum ipſe Teſtis de tali acceſſu deponens referat de auditu à dicto D. Gregorio Guillichino, quod erat ad bonum finem, & quod nihil mali intercedebat inter D. Canonicum, & occiſam, qui cum eſſet melius informatus, vtpotè amicus, & conſan-

ſanguineus Inquiſiti (vt mihi ſupponitur) omnem contrariam ſuſpicionem excludit; cui depoſitioni conſonare videtur alia ipſius D. Canonici Franceſchini fratris Inquiſiti, qui interrogatus an ſciret inter D. Canonicum Caponſacchium, & ſponſam vlla familiaritas intercederet, reſpondit -- *Queſto non haueuamo mai ſaputo per l'innanzi, mà ſeguito il ratto la Città dice, che frà eſſi vi paſſaſſe aſſolutamente qualche corriſpondenza*... quæ ignorantia prorſus excludit, & inueriſimiles reddit furtiuos, & illicitos acceſſus D. Canonici ad domum, cum enim Inquiſitus ſponſam occidere minatus eſſet ob iniuſtam ſuſpicionem de illo conceptam credibile eſt, quod tam ipſe, quàm frater, omneſque domeſtici omni ſtudio inuigilauerint pro eius cuſtodia, itaut ipſis innotuiſſet dictus acceſſus ſi verè, vt ſupponitur, frequens fuiſſet, & ad malum finem ordinatus.

Eodemque defectu probationis laborat prætenſa mutua deoſculatio in itinere, de qua deponit Teſtis vnicus, cuius nimia animoſitas ex eius aſſertione detegitur, dum id vidiſſe aſſerit nocturno tempore non reddita ſcientiæ cauſa, quod, ſcilicet, tunc Luna luceret, vel alio artificiali lumine, tenebras noctis depellente, id videre potuerit, qua ratione non reddita, fidem non meretur, vt aduertunt *Burſatt. conſil. 34. num. 6. Farinac. de Teſt. quæſt. 66. num. 38 Giurb. conſil. crimin. 37. num 41. Polidor. Rip. in tract. de noct. temp cap. 57. num. 7. & ſeq. Vermigliol. conſil. 74. nu. 1. D. Canonicus Rainald. tom. 1. cap. 11. §. 8. ad 13. num. 8. fol. 591.* Addita inſuper maxima inueriſimilitudine, quod dum Chiſium ducebat, & quidem ea velocitate, vt potiùs volare, quàm velociter progredi videretur, retroſpicere potuerit, & mutuam deoſculationem videre, quæ pariter inueriſimilitudo fidem illi adimit, iuxtà ea quæ tradunt *Farinac. conſil. 192. num. 60. in fin. Vermigliol. conſil. 20. num. 24. & conſil. 74. num. 4.*

Omnemque prætenſæ inhoneſtatis ſuſpicionem excludere apta eſt aſſertio eiuſdem miſerrimæ Puellæ facta in articulo mortis poſt plura lætalia vulnera eidem illata ad requiſitionem Religioſarum perſonarum, & aliarum ipſi miniſtrantium, quod nunquam defecerat fidei coniugali, ſemperque cum omni caſtitate, & pudicitia ſe geſſerat, vt ex iurata atteſtatione, ibi -- *Come in occaſione, che ci ſiamo trouati preſenti, e ſiamo aſſiſtiti all'vltima infirmità della quale è morta Franceſca Pompilia moglie di Guido Franceſchini, eſſendo la medema ſtata più volte ricercata da Padri ſpirituali, & altre perſone, ſe haueua commeſſo mancamento alcuno al detto Guido ſuo marito, per il quale gl'haueſſe dato occaſione di maltrattarla nel modo, che ſi vedeua, e farla maltrattare a morte, la medema ſempre hà riſpoſto, che non hà in alcun tempo commeſſo mancamento alcuno, ſempre è viſſuta con ogni caſtità, e pudicitia*; Et magis præcisè de hac conſtanti aſſertione deponit Fr. Cæleſtinus Angelus à S. Anna Ordinis Diſcalceatorum S. Auguſtini in dicta atteſtatione ſubſcriptus ibi - *la qual ſempre diceua, che Dio gli perdoni in Cielo,*

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conforme io gli perdono in terra, mà per la cauſa che m'oppongono, ſono innocentiſſima à ſegno tale, che dicena, che Dio di queſto peccato non gle lo perdonaſſe, perche non l'ho mena fatto. Quæ ſanè aſſertio in articulo mortis emiſſa omnem fidem meretur, cum nemo tunc mentiri præſumitur, vt tradunt *Natta conſil.* 537. *num.* 18. *lib.* 3. *Calderin. conſil.* 15. *tit. de vſur. Menoch. de præſumpt. lib.* 5. *præſumpt.* 5. *num.* 7. *& ſeqq.* & in præciſis terminis ſuſpecti de hæreſi, quod huiuſmodi ſuſpicio tollatur ſi in articulo mortis dicat, & proteſtetur ſe vixiſſe, & velle mori, & credere ſecundùm placita Sanctæ Romanæ Eccleſiæ, *Decian. tract. crimin. lib.* 5. *tit. de defenſ. Reor. cap.* 17. *nu.* 27. vbi refert opinionem *Alberici in Rubric. C. de hæret. circa finem verſ. vltimo nota*, aſſerentis ex hac proteſtatione facta coram Cardinalibus defenſam fuiſſe memoriam Bonifacij Papæ, & ipſum Albericum ex ea defendiſſe Galeatium Vicecomitem Mediolani. Et maximè dum omnes præfati Teſtes conueniunt miſerrimam hanc Puellam obiiſſe cum maxima ædificatione aſſtantium, ſemperque geſſiſſe actus Chriſtianæ perfectionis, vt in dicta atteſtatione ibi: *e per hauerli veduta fare vna morte da Santa*. Et in alia dicti Patris Cæleſtini Angeli præteritæ vitæ innocentiam ex actibus ante obitum geſtis arguentis, quæ omnes dantur *in Summar. num.* 6.

Cæterum quatenùs etiam tam ex dicta fuga, quàm ex repertis litteris, vt ſupponitur, & ipſarum verbalis tenor præſeferre videtur amatoris aliquam de inhoneſtate vxoris potuiſſet Inquiſitus ſuſpicionem concipere, quæ iuſtam illius iram prouocare voluiſſet; Nullatenus tamen excuſabilis redditur adeò truculenta vindicta, poſt tantum temporis interuallum ſumpta, nedum de ipſa miſerrima vxore, ſed de omninò incautis, & nil tale merentibus eius genitoribus, & cum adeò grauibus circumſtantijs delictum extollentibus, quominus pœna vltimi ſupplicij plectendus non eſſet ſi illud fateretur. Quamuis enim iuſtus dolor violatæ coniugalis fidei maritum adulteram vxorem occidentem pœnam temperare ſoleat, nam de totali impunitate ampliùs agendum non eſt poſt ademptam licentiam proprium honorem nece Adulteri, vel Adulteræ vindicandi, vt monent *Felin. in cap. ſi verò num.* 3. *de ſentent. excommunic. Imola in l. quid ergo* §. *ſi hæres num.* 4. *ff. de legat.* 1. *Mantic. conſ.* 241. *num.* 18. *in fin. lib.* 1. *Oldendorp. var. lect. ad Iur. Ciuil. interpretat. lib. de vſucap. tit. de adult. num.* 1. *in fin. pag.* 295. *Baccon. ad Treuul. volum.* 2. *diſp.* 32. *theſ* 6. *litt. C. verſ. idem conceditur pag.* 1277. *Caſſad. Ritteſch. ad Nouell. Iuſtinian. par.* 12. *cap.* 5. *num.* 8. *pag.* 677. *Matthiaſ. Stephan. ad nouell.* 177. *num.* 20. *pag.* 609. Attamen ad euitandam *leg. Corneliæ de Sicarijs* pœnam, eamque temperandam, ſeruari debent omnia requiſita relat. per *Angel. de malefic. verſ. che hai adulterato la mia Donna num.* 8. *& ſeqq.*, *& per Ioann. de Teitops in tract. de Iur. occiden. Præhenſ. in adult. par.* 2. *num.* 43. *& ſeqq.*

Præcipuum autem, & indiſpenſabile requiſitum eſt, quod Vxor

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ſit in adulterio deprehenſa, vt per *Text. in l. quod ait lect.* 23. *ff. ad leg. Iul. de adulter.* ibi : *voluit enim ità demum hanc poteſtatem Patri competere, ſi in ipſa turpitudine filiam deprehendat* labeo quoque probat, & Pomponius ſcribit in ipſis rebus venereis deprehenſam occidi, & hoc eſt, quod *Solon. & Drago* dicunt eſplicat ibi *Gloſ. verſ. in ipſis rebus*, & tradunt *Bartol. alique interpetreſ, Salicet. in l. Gracchus C. ad leg. Iul. de adult. Angel. de maleſic. dicto verſ. che hai adulterato la mia Donna num.* 8. *& 9. Caball. reſol. crimin. caſ.* 300. *num.* 22. 29., *&* 33. *Matth. Sanz. de re criminal. contr.* 11. *num.* 12. *& ſeq.* qui *Text. licèt loquatur de Patre*, multò magis procedit in Marito, cuius ira facilius contra Vxorem accendi poteſt ſiniſtra, & ſæpè iniuſta ſuſpicione de ea concepta, & qui non ſemper bonum prò ea conſilium capere ſolet, quod Patrem ex inſtinctu naturæ facere lex præſumit, vt monet *Text. in l. nihil intereſt ff. eodem* ſolum excuſans Patrem ſi vna cum Adultero filiam occidat, vel læ talia vulnera eidem inferat.

Idque eſt adeò verum, vt non ſufficiat Vxorem fuiſſe repertam in actibus remotis, vel præparatorijs ad adulterium, vt communiter firmant DD. & ſignantèr *Soccin. in cap. peruenit n.* 365. *cum duobus ſeqq. de Sent. excom. Blanc. de Iudic. num.* 69. *Decian. tract. crim. lib.* 9. *cap.* 5. *num.* 15. *Toloſan. ſintaſm. Iur. lib.* 36. *cap.* 6. *num.* 7. *Laurent. Kirgheu. com. opin. cent. prima concluſ.* 5. *verſ. adulter.* an probaretur circa medium *Anton. Mart. in Comment. de crimin. ad lib.* 48. *ff. tit.* 3. *num.* 16. affirmans *Vlpian.* verecundiæ Cauſa paucis, & ſignificantibus verbis vſum eſſe quibus non niſi quintam amoris lineam intelligere poſſit *Farinac. quæſt.* 121. *num.* 42. *circa med. verſ. Credo voluerit Io: Teitopſ. de Iur. occid. præhenſ. in adulter. par.* 2. *num.* 1. *litt. I.* cuius verba referre opportunum cenſeo cum illum D. Iudices forſan præmanibus non habeant ſic itaque verba dicti *Text.* explicat ibi -- *Quæ vtique arguunt non ſufficere hic adulterij præludia, ſed requiri obſcenam membrorum Commixtionem &c.* & poſt relatas Doctorum Authoritates ſubdit -- *Idque clarius apparet ex verbis ſolonis relatis à Luciano. in Eunucho ante finem* ibi -- *niſi ij mentiuntur, qui eum aiunt deprehenſum in adulterio, & deinde reprobat opinionem Accurſij aſſerentis ſufficere adulterij præludia, & in §. ſecundo poſt relatam conciliationem, quod ſcilicèt eius opinio intelligi debeat de præludijs proximis, ita ſuam explicat Sententiam* ibi : *Sed proximis, vel in caſu capit. litteris* 12. *de præſumpt. vbi ex deprehenſione ſolius, & nudi cum ſola, & nuda in eodem lecto iacentis violenta., & certa fornicationis ſuſpicio oritur ex qua Sententia diuortij promulgari poſſit. Attamen ne violentam quidem ſuſpicionem hic ſufficere luculentèr oſtendunt leges ſub litt.* 1. *adductæ neque enim hæc inuentio eſt vera in ipſo actu Adulterij deprehenſio, & ex cauſa ciuili in dicto cap. litteris ad plenam Adulterij probationem in Cauſa Criminali haud firmitèr arguitur &c.*

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cum neme ex ſuſpicionibus damnari, nedum occidi queat lege abſentem ff. de pœnis quin, & iſta violenta ſuſpicio non eſt indubitatum indicium ad probationem, quale in criminal. requiritur leg. final. C. de probationibus, ſed immò fallax eſt quia talitèr inuenti potuiſſent ſic agere, vt adulterarent, & tamen non adulterarint, vt loquuntur Grauett. &c.

Solumque de pœna temperanda agendum eſſet, ſi D. Inquiſitus in actu deprehentionis Vxoris fugitiuæ in Oſpitio Caſtri noui eam cum D. Canonico illam aſſociante occidiſſet, at cum neglecta vindicta facti maluerit eligere vindictam Iuris, vtique non potuit illam ex interuallo interficere, vt per *Text. in l. quod ait lex §. final. ff. ad l. Iuliam de adult.* firmantem non poſſe vindictam poſt diem differri traduut *Angel. de malefic. dicto verſ. che hal adulterato la mia Donna num. 21. in fin. Farinac. qu. 124. num. 403.* aſſerens ita in praxi ſeruari nè detur aditus ſe vlciſcendi propria *Auth. & conſ. 141. per tot., & ſignantèr num. 9. & ſeq.*, vbi confutat *Bertalzol. conſ. 42.* parificantem caſum deprehenſionis in adulterio, & quod Vxor de illo conuicta ſit itaùt non valeat de eo dubitari, nec ſit iniuſta, vel nimis facilis ſuſpicio Viri aſſignans validam differentiæ rationem, quia iuſtus dolor iram excitans, quæ viri mentem turbare ſolet verificatur in actuali deprehenſione Vxoris in adulterio, & in actibus proximis non ex interuallo, quamuis iuſta ſit eius ſuſpicio, adeoque leges Maritum excuſantes ex Cauſa Iuſti, & inconſulti doloris, vt in *l. graccus ad l. Iuliam de Adulter. & in l. nec in ea lege ff. eodem* extendi non poſſunt ad vindictam ex interuallo ſumptam, quia tunc nec impetus doloris, nec inconſultus dolor verificatur, & ſedato animo homicidium patratum dicitur. Quod ſi ad refrenandum impetum ſæuientis doloris, ne propria authoritate Maritus vindictam ſumat non excuſatur a pœna *legis Cornel. de Sicarijs* ſi Vxorem ex interuallo interficiat. quantò minus excuſandus erit ſi electa via publicæ vindictæ per Carcerationem Vxoris, & prætenſi Amaſij longo interiecto temporis ſpatio eamdem vna cum ſuis Genitoribus adeò immanitèr trucidauerit.

Accedit ad exaſperandam pœnam, quod reſpectu infelicium Genitorum nulla ſuberat iuſtâ Cauſa eos occidendi, niſi prò tali conſiderari velit iis mota ſuper reſciſſione Inſtrumenti Dotalis ob Detectum Partum ſuppoſitum, quæ potius delictum extollit ad atrociſſimum Crimen læſæ Maieſtatis ob omnimodam ſecuritatem, quàm Pontificia Maieſtas litigantibus in Vrbe præbere voluit, vt ex nota Conſtitutione Alex. VI. §. 2. *in princ.* ibi: *Horrenda in vmanitate deteſtandaque ſeuitia mortem ſitientes aliorum*: & in fine ibi: *in Diuinæ Maieſtatis offenſam Iuriſdictionis, & authoritatis Apoſtolicæ læſionem*: & §. 4. circa medium ibi: *quæ læſæ Maieſtatis Criminis Sententias incurrant ipſo facto*: & paulo poſt ibi: *Sintque etiam in ſuis bonis omnibus a-*

cun-

cnuctis perpetuò diffidati , nihilominus , & Banditi , ac infames , & inhabiles habeantur .

Plurimum quoque conſiderari mæretur qualitas adeò inhumanæ necis in propria Domo patratæ , quæ debet eſſe vnicuique tutiſſimum habitaculum, vt per *Text. in l. plerique ff. de in Ius vocando*, & *in l. nemo* 103. *ff. de regul. Iur.* ibique *Petrus Faber*, & *Euerard.* tradunt *Farinac. in fragment. Crimin. par.*1. *verſ. Domus num.*130. *Clar. in §. final. quæſt.*10. *Gabal. caſ.*13. *num.*10., & eleganter *Cicer. in Orat. prò Domo ſua* ibi: *Quid eſt ſanctius quid omni religione munitius , quàm Domus vnuſcuiuſque Ciuium , hic aræ , hic foci , hic dij penates , hic Sacræ Religionis Ceremoniæ continentur . Hoc perfugium eſt ita Sanctum omnibus , vt inde abripi neminem , nefas ſit* : Multoque magis reſpectu miſerrimæ Vxoris , quæ in illa detinebatur loco Carceris approbante quoque Domino Abbate Franciſchino , adeout publica ſecuritas violata dici debeat , & læſa Maieſtas Principis cum eadem ratio habeatur de vero , & formali Carcere , ac de aſſignato à Principe firmant *Farinac. quæſt.*30. *num.* 47. *Villoſ. de figit. cap.*18. §. 3. *num.*3. *& ſequen. D. Canon. Raina.d. in prax Crimin. tom.*1. *cap.*3. §.2. *ad* 6. *num.*146.

Tandèm eſt quoque conſideranda qualitas Armorum prohibitorum cum quibus delictum fuit patratum, quæ de per ſe pœnam mortis expoſcit , quamuis ipſum Principale crimen eſſet mitius puniendum , vt monent *Sanfelic deciſ.*43 *per tot.* referens ità fuiſſe iudicatum *Capic. latr. deciſ.*78. *num.*2. *& per tot.* & ibi *Adden. num.*2.

Quarè &c.

Ioannes Baptiſta Bottinius Fiſci , & Cam. Apoſt. Aduoc.

Illuſtriſs. & Reuerendiſs. D.

GVBERNATORE

In Criminalibus:

Romana Homicidij cum qualitate.

P R O

Fiſco.

C O N T R A

D. Guidum Franciſchinum, & Socios.

Iuris D. Aduocati Fiſcalis.

ROMÆ, Typis R. Cam. Apoſt. 1698.

SVMMARIVM.

Illuſtriſs. Sig. Padrone mio Collendiſſimo.

Num. 1. *Epiſtola Domini Marzimedici Gubernatoris Aretini.*

MI giunge la ſua fauorita lettera in data del dì 24. del caduto, e ſpiacemi ſommamente l'agitazione, nella quale mi accenna ritrouarſi per le maledicenze, che vanno diſſeminando per Roma li Signori Pietro Comparini, e ſua moglie intorno à mali trattamenti, che dicono hauer riceuuti nella di lei Caſa nel tempo, che ſono dimorati in Arezzo, e ricercandomi ella di ſincera informatione, le replico con tutta ingenuità eſſere li medemi ſtati trattati da tutta queſta Nobilta, & in ſua Caſa con tutto riſpetto, e decoro, e la cauſa de primi diſturbi, che nacquero trà eſſi, e la Signora ſua Madre, e Fratelli fù perche la Sig. Violante pochi giorni doppo giuntaui preteſe dominar eſſa la Caſa, tener le Chiaui di tutto, & eſcluderne affatto la Sig. Beatrice ſua Madre, al che con raggione non hauendo voluto acconſentire veruno de ſuoi Signori Fratelli, diede motiuo alle prime groſſezze, e conteſe domeſtiche; s'accrebero poi nell'oſſeruare, che il Sig. Pietro ſudetto laſciata la prattica, e conuerſatione delle Perſone più qualificate di queſta Città, ſi vniua con i più vili, e con eſſi loro ſi diede à frequentare giornalmente quante bettole v'erano, il che caggionò à lui di ſcredito, & à lor Signori poca reputazione. Di ſcandalo molto maggiore ſono ſtate più fughe, e ricorſi fatti dalla Sig. Spoſa loro figlia à Monſig. Veſcouo, non con altro motiuo, ſe non che ne eſſa, ne li ſuoi Genitori voleuano più dimorare in Arezzo, mà tornarſene à Roma. Sgridata però da queſto prudentiſſimo Prelato, la rimandò ſempre à Caſa in Carrozza. Vero è pero, che doppo eſſere partiti da queſta Città, li Signori Comparini, la Sig. Spoſa ſi è diportata fino ad ora cõ gran modeſtia, e ſauiezza, da che prende indizio ogn'vno, che à ſimili eccẽſſi la pouera giouinetta foſſe ſtata indotta da ſuoi Genitori, come ella ſe ne dichiara con tutti, deteſtandone anche la memoria, onde ſi và reſtituendo nel concetto vniuerſale, e di queſte Dame, che haueuano tralaſciato di trattarla. In vltimo li medemi Signori Comparini haueuan leuate tutte le gioiè alla Sig. Spoſa, che gli sforzai à reſti-

ſtituirle. In ſomma ſono tali, e tanti li ſcandali, che hanno dati nel decorſo di più meſi, che vi ſono dimorati a tutta la Città, che non gli ne ſcriuo che pochi, e l'accerto, che li Sig. ſuoi fratelli hanno hauuta con eſſi vna ſofferenza da Martiri, ſi che vedendo Io, che erano venuti incorrigibili, e la fauola della Città, e che poteuano mettere in neceſſità li Signori ſuoi Fratelli di commettere verſo di eſſi qualche eccesſo per regola di buon gouerno, mi voltai à preualermi dell'autorità, che per ſua gratia mi hà data S. A. S. col minacciarli di priggionia, e caſtighi ſe non ſi foſſero corretti, doppo queſte minaccie parendoli forſi di meritarli, e che li poteſſe ſuccedere, deliberorono ritornare à Roma, come fecero poco doppo, laſciando di loro in queſta Città vn peſſimo concetto; del reſto al preſente in ſua Caſa vi è vna grandiſſima quiete, e la Sig. Spoſa viue con ſauiezza eſemplare, deteſtando il male eſempio, che hà di ſe dato à queſte Dame, confeſſando liberamente, che li veniua commandato da ſuoi Genitori, & à mio giuditio è ſtata la mano di Dio, che hà liberati lor Signori da ceruelli coſi torbidi. Queſto è quanto poſſo delineatli del molto più, che vi ſarebbe da dirle; ſi tranquilli dunque, e creda, che il diſcredito è ſtato tutto loro, ne reſtandomi, che ſoggiungerle mi confermo con tutto l'animo.

Di V.S. Illuſtriſs. Arezzo 2. Agoſto 1694.

Deuotiſs. & Obligatiſs. Seruitore
Vincenzo Marzi Medici.

Sig. Abb. Paolo Franceſchini. Roma.

Num. 2.
Depoſitio Franciſcæ.

Racconterò à V.S. la Cauſa, per la quale Io ſono fuggita dalla Caſa di mio Marito, & è che eſſendo tre Anni ſono ſtata maritata qui in Roma da mio Padre, e mia Madre al ſodetto Franceſchino, e doppo eſſere ſtata ſpoſata al medemo, ſi trattenne in Roma per lo ſpatio di due meſi ſenza conſumare il matrimonio, e paſſato d. tempo, fui condotta aſſieme colli ſoderti mio Padre, e mia Madre dal ſodetto mio marito in Arezzo, perche nelli Capitoli matrimoniali ſi era conuenuto, che d. mio Padre, e mia Madre doueſſero venire ad habitare in Arezzo conforme fecero, e doppo eſſerſi trattenuti colà

colà per lo ſpatio di quattro meſi ſe ne partirono, e ſe ne ritornorno in Roma per li mali trattamenti, che riceueuano, non ſolo da mio Marito, mà da gl'altri di ſua Caſa, & eſſendo Io reſtata in Arezzo doppo conſumato il matrimonio paſſato quaſi vn Anno, ne riuſcendo grauida, cominciò d. mio Marito, & anco Beatrice ſua Madre à voltarſi contro di me, perche non faceuo figlioli dicendo, che per cauſa mia ſi eſtingueua la ſua Caſa, e che non ſi poteua da me col tempo ſperare ſucceſſione, mentre eſſo mio Marito diceua d'auuantaggio di hauer ſentito dire da mio Padre, che in occaſione di certa infermità da Zitella mi haueua dati certi ſemi per medicamento, che queſti forſe impediua di far figlioli, e con queſto motiuo Io veniuo continuamente ad eſſer maltrattata dal ſodetto mio Marito, e Socera, benche io gli replicaſſi, che ſopra queſto non ci haueuo colpa, e continuauano tutta via à minacciarmi ſulla vita, & andauano cercando ogni preteſto benche ſenza occaſione per maltrattarmi, e poi il medemo mio Marito cominciò à prenderſi geloſia di me, e mi prohibì, che non mi affacciaſſe alla fineſtra, & Io per togliergli queſta occaſione non mi affacciauo mai, mà tãto non baſtaua, perche vn giorno ſtando ſopra la loggia, il medemo diſſe, che ſtauo à far l'amore la sù alto ſenza nominarmi cõ chi, & Io gli replicai, che queſti erano preteſti, e dal luogo ſodetto non ſi vedeua, che vna ſtrada ſenza rincontro di feneſtra delle Caſe, perche ſopraſtaua d. loggia alli Tetti ſolamente, e perche poi il ſodetto Canonico Caponſacchi con altri Giouani del Paeſe paſſauano auanti Caſa noſtra, e ſi fermauano a diſcorrere con certe Donnicciuole, che ſtanno in faccia il medemo mio Mariro cominciò à borbottare contro di me, per cauſa, che d. Canonico paſſaua come ſopra, benche Io non haueſſi in ciò colpa alcuna, e tanto più gli creſcè il ſoſpetto, perche ſtando vna ſera alla Comedia trà molte altre genti il Canonico Conti fratello del Marito di mia Cognata, mi tirò alcuni confetti, e mio Marito, che ci era ancor lui lì vicino ſe ne adombrò, mà non del Conti, mà del Caponſachi, che ſtaua à ſedere à canto il ſodetto Conti, mà poi perche d. Conti pratticaua in Caſa noſtra come Parente, preſe ombra anco del medemo, in modo tale, che accortami di ciò, quando poi veniua d. Canonico Conti in caſa noſtra Io mi ritirauo in Camera, perche non haueſſe à darmi maggior trauaglio,

Litt. A.
Recenſet minas ob Zelo hypiam viri de Amaſio.

mà mio Marito non ſi appagaua di ciò, mà diceua, che io lo faceuo ad arte, e che non gli ſi leuauano li ſoſpetti, che haueua contro di me, e tornaua nuouamente à tribularmi per cauſa del Caponſacchi, in modo tale, che mi ero ridotta in diſperatione, e non ſapeuo come dire, e poi per togliergli anco queſt'occaſione paſſando vn giorno detto Caponſachi auanti Caſa gli parlai, e lo pregai à contentarſi di non paſſarci per leuar me da tanti guai, che riceueuo per queſta cauſa da mio Marito, & eſſo mi ſoggiunſe, che non ſapeua donde eſſo mio Marito canaſſe tal motiuo, mentre eſſo paſſaua di là per altri affari, e che finalmente non gli ſi poteua impedire paſſare per ſtrada, e benche mi promettеſſe di non paſſarci, tanto continuò à paſſarci, mà Io non mi affacciauo alla fineſtra, e con tutto ciò il ſodetto mio Marito non ſi mai quietaua, e continuaua à maltrattarmi, e minacciarmi sù la vita, e che voleua ammazzarmi, anzi quando fù la coſa della Comedia raccontata di ſopra, tornati che fuſſimo à Caſa mi appuntò vna Piſtola in petto dicendo - Oh Criſto chi mi tiene, che non ti ſtenno quì, ammiri bene il Caponſacchi, ſe non vuoi, che ti facci coſi, e non ti ammazzi - anzi in principio delli ſtrapazzi ſudetti andai due volte da Monſig. Veſcouo, perche haueſſe rimediato in qualche forma, mà non ſeruì à niente per la corriſpondenza, che haueua colla Caſa di mio Marito; Onde eſſendo Io in quella Città foraſtiera, ne ſapendo in che modo liberarmi dalli pericoli, e ſtrapazzi ſodetti dubitando, che ſe non mi ammazzaua con armi, mi haueſſe potuto auuelenare, penſai fugirmene, e venire in Roma da mio Padre, e Madre, mà non ſapendo in che modo farmi, vn meſe fà in circa andai à confeſſarmi da vn P. di S. Agoſtino, che li diceuauo il Romano, e gli raccontai tutti li miei guai, pregandolo, che ſcriueſſe in mio nome, *perche io non sò ſcriuere*, à mio Padre, con rappreſentarli, ch'io ero diſperata, e che ero neceſſitata partire da mio Marito, e venirmene da lui in Roma, mà non hebbi riſpoſta, e coſi non ſapendo à chi ricorrere per mettere in eſſecutione queſta mia volontà, e penſando, che neſſuno del Paeſe, ò per Parentela, ò per amicitia di mio Marito non mi haurebbe aſſiſtito, finalmente mi riſolſi parlarne al d Caponſacchi, perche *ſentiuo dire, che era huomo riſoluto*, conforme paſſando vn giorno auanti Caſa mia in tempo, che mio Marito era fuori di Città, lo chiamai,

B
Peierat aſſerens neſcire ſcribere.

C
Fatetur Amaſii Pollentiam, & Audaciam.

mai, *e dalle ſcale gli parlai*, con rappreſentargli il pericolo, nel quale mi trouauo anco per cauſa ſua, e che perciò lo pregauo à condurmi quà in Roma da mio Padre, e mia Madre, mà eſſo mi replicaua, che non voleua in conto alcuno ingerirſi in queſta facenda, perche ſarebbe ſtato mal ſentito da tutta la Città, tanto più, che eſſo era amico della caſa di mio Marito, mà Io lo ſcongiurai tanto, e gli diſſi, ch'era opera da Criſtiano liberare dalla morte vna pouera Donna foraſtiera, in modo tale, che l'induſſi à prometrermi, che mi hauerebbe condotto come ſopra, & all'hora mi diſſe, che hauerebbe fermato il Caleſſe, e che quando foſſe ſtato aggiuſtato nel paſſare, che haueria fatto auanti Caſa noſtra, me ne hauerebbe dato il ſegno con farſi cadere il fazzoletto, mà eſſendoci paſſato il giorno ſeguente, che lo ſtauo alla Geloſia, non fece d. ſegno, & il giorno ſuſſeguente eſſendo ripaſſato *come ſopra ci parlai nueuamente*, e mi doſi con eſſo, che haueſſe mancato alla parola datami, e lui ſi ſcusò, che non haueua trouato Caleſſe in Arezzo, & io gli replicai, che in tutti i modi l'haueſſe procurato anco di fuori, conforme promiſe di fare, e la Domenica vltima del meſe paſſato ripaſſando auanti caſa fece il ſegno col fazzoletto, come haueua detto, e coſi eſſendo andata à letto con mio marito la ſera, & eſſendomi accorta, che la notte dormiua mi alzai da letto, mi veſtij, e preſi alcune robbicciuole di mio vſo, vna ſcattola con molte bagattelle dentro, & alcuni denari, che non ſo quanti foſſero da vn Sgrigno, che ce ne erano anche de miei proprij, conforme appariſce dalla nota tanto delle robbe, quanto delli denari fatta dal Cancelliero di Caſtelnouo, e poi ſceſi à baſſo, che era l'alba, doue trouai d. Caponſacchi, & andaſſimo aſſieme à Porta S. Spirito, fuori della quale ſtaua vn Caleſſe con due Caualli, e Vetturino, e montati tutti due in Caleſſe ce ne veniſſimo alla volta di Roma con caminare notte, e giorno ſenza fermarci, ſe non tanto quanto ſi rifreſcauano, e mutauano li Caualli, ſinche giungeſſimo *à Caſtel nouo*, *doue arriuaſſimo all'alba*, & iui poi foſſimo ſopragiunti, conforme hò raccontato di ſopra à V.S. da mio Marito.

D
Fatetur colloquium cũ Amaſio.

E
Fatetur nõua coiloquia cum Amaſio.

F
Mendacium circa Aduentum ad Caſtrum nouum.

Reſpondit. *d. Caponſachi non Parente in conto alcuno à d. mio Marito*, mà benſi amico.

G
Amaſius non eſt affinis Viri.

Reſpondit. Il ſodetto Caponſachi prima del fatto, *non mi hà man-*

H

Noua mendacia quod non receperit litteras Amasij, & nesciat scribere.

mandato alcuna lettera, perche io non so leggere il manoscritto, e non sò scriuere.

Respondit. *Ne meno io prima del fatto sodetto hò mai mandato lettera di sorte alcuna al d. Caponsacchi.*

I

Aliud mendacium quod non inscripsit Epistolas Amasio.

Iterum constituta &c. Respondit &c. Io mentre stauo in Arezzo scriffi ad istanza di mio Marito all'Abbate Francescbini mio Cognato quì in Roma, *mà perche io non sapeuo scriuere, esso mio Marito faceua la lettera col toccalapis, e poi mi faceua ripassarci sopra colla penna, & inchiostro da me*, e mi diceua, che suo fratello haueua gusto d'hauer qualche mia lettera, che fosse stata scritta da me, e questo fù due, ò tre volte.

K

Nescieres scribere, eius Vir hortabat Epistolas.

Respondit. Se V.S. mi facessi vedere qualch'vna delle lettere da me scritte come sopra, e mandate all'Abbate Francescbini le riconoscerei benissimo.

Et ostensa &c. & Inter- &c. Respondit. Hò visto, e vedo benissimo questa lettera mostratami d'ordine di V. S. che comincia - Carissimo Sig. Cognato, sono con questa - e finisce - Francesca Comparini, ne Francescbini - Et hauendola osseruata mi pare, mà non posso attestare per verità, che sia vna delle lettere da me scritte nella conformità sodetta all' Abbate Francescbini mio Cognato &c. Et paucis interiectis &c.

Interrogata &c Respondit. Io non hò mai mandate lettere di sorte alcuna per Maria sudetta à persona veruna.

L

Aliud mendacium circa Aduentum ad Cauponã Callri noui.

Respondit. Io per la verità arriuai a Castel nouo al rosseggiar dell'Alba.

Respondit. Noi ci fermassimo nell'Osteria di Castel nouo per lo spatio di più di vn'hora, & in questo tempo ci trattenissimo in Sala di sopra, & post pauca &c.

M

Noua mendacia quod non cubauerit in Cauponã Callri noui.

Interrogata Respondit. Io non mi missi à dormire ne riposare nell'Ostaria di Castelnouo per quel tempo, che mi ci fermai come sopra.

Respondit. Sento, che V. S. mi dice, che la Corte pretende in oltre, che Io la notte dormissi nella sopradetta Ostaria di Castel nouo in vna Camera di sopra, nella quale dormisse anco il Canonico Caponsacchi, & Io dico, e rispondo, che niuno può dire questo per verità, perche Io non riposai in conto alcuno in d. Ostaria, e mi ci fermai per il tempo da me detto di sopra &c.

Ca-

Cariſſimo Sig. Cognato.

Num. 3.
Epiſtola Franci-ſcæ ad Abbatem Franciſchinum.

Sono con queſta à riuerire V. S. e ringratiarla delle operationi fatte per collocarmi in queſta Caſa, doue lontana dalli miei Genitori viuo hora vna vita tranquilla, & vna ſalute perfetta non hauendo li medeſimi attorno, che mi contriſtauano giorno, e notte con li peruerſi loro comandamenti contro la legge humana, e Diuina à non amare il Sig. Guido mio Marito, à fuggire di notte dal letto del medeſimo, con farmeli dire, che ſeco non ci haueuo genio, che non era mio Marito, perche ſeco non hò figli, e con farmi fare in più volte le fughe al Veſcouo ſenza veruna cagione, con farmeli dire, che Io voleuo fare diuortio col Signor Guido, e per mettere vn gran diſordine in Caſa, diſſe mia Madre al Veſcouo, al Sig. Guido, e poi per la Città, come il Sig. Canonico mio Cognato mi haueua richieſto dell'Honore, coſa non mai penſata dal medeſimo; Mi ſtimolauano di continuo à conſigli lontani dal Giuſto, e dalla Pace, che ſi deue al Marito col laſciarmi nella loro Partenza per eſpreſſo comandamento di obedienza ad ammazzare il Marito, e dare il veleno alli Cognati, e Socera, ed incendiare la Caſa, à rompere vaſi, & altro, acciò non pareſſe doppo partiti, che foſſero ſtati loro appreſſo il Mondo, che mi conſigliauano à fare tante ſeggierezze, & in fine della loro partenza mi laſciorno, che Io mi ſceglieſſi vn Giouane à mio genio, e che ſeco me ne fuggiſſi a Roma, e tante altre coſe, che per roſſore tralaſcio, hora, che non hò chi mi ſolleui la mente, godo vna quiete di Paradiſo, e conoſco, che li mie Genitori mi guidauano per loro pazzia al precipizio, onde riconoſcendo li ſpropoſiti fatti per comandamento delli miei Genitori, ne chiedo perdono à Dio, à V.S. à tutto il mondo, volendo eſſere buona Criſtiana, e buona moglie del Sig. Guido mio, quale tante volte mi ſgridaua con maniera amoroſa dicendomi, che vna volta l'hauerei ringraziato delle rippreſioni mi faceua, e di quelli cattiui, che mi faceua conoſcere, che mi dauano li miei Genitori, e mi confermo. Arezzo 14. Giugno 94.

Affezionatiſs. Serua, e Cognata.
Franceſca Comparini ne Franceſchini.

Num. 4.
Epiſtola Franciſca ſcripta Domino Abbati Franciſchino.

Foris - Al Signor Abbate Paolo Franceſchini. Roma.
Intus verò. Cariſſimo Signor Cognato. Hò riceuuto il ventaglio donatomi da V.S., quale è ſtato di mia ſodisfattione, l'hò gradito, e la ringratio, mi diſpiace, che li miei Genitori lacerino ſenza ragione la noſtra Caſa, Io per me ſtò bene, e contenta, non hauendo hora chi mi fomenti al male, voglio bene à tutti di noſtra caſa col ſanto timor di Dio. In tanto ſi rida delle maledicenze delli miei Genitori, mi commandi, e la riueriſco di cuore. Arezzo 19. Luglio 1694.

Obligatiſſima Serua, e Cognata
Franceſca Comparini Franceſchini.

Num. 5.
Examen D. Canonici Caponſacchi.

Io doueuo venire in Roma per accommodarmi, e lo confidai con il Canonico Gio: Battiſta Conti parente del Franceſchini, che pratticaua in Caſa de medemi, ſtimo, che detta Franceſca l'haueſſe potuto ſapere dal medeſimo Canonico, ſe bene anco per la Città ſi diſcorreua della mia venuta in Roma, che doueua ſeguire vn pezzo fà, onde mi fù *vn giorno portata vna lettera* da vna tal Maria, che in quel tempo era Serua di detto Franceſchini mandatami da detta Franceſca, nella quale mi diceua, che haueua ſentito la mia venuta in Roma, e perche ſuo Marito la voleua ammazzare, haueua riſoluto di venire in Roma dá ſuo Padre, e che non ſapendo con chi confidarſi, mi richiedeua à volergli fare il ſeruitio accompagnarla come ſopra, & io gli riſpoſi, che non voleuo far queſta coſa, ne mettermi à tal cimento, *che gli ſcriſſi la riſpoſta per l'iſteſſa Serua*, che io non mi ricordo il tempo preciſo, che mi mandaſſe la lettera ſudetta, e doppo continuò à farmi la ſudetta inſtanza con buttarmi *alle volte dalla feneſtra, mentre io paſſauo auanti Caſa ſua qualche polizino*, con reiterarmi l'inſtanza ſudetta, & io gli replicauo, *mandandogli la riſpoſta per detta Serua*, dicendoli, che non voleuo ingerirmi in tal facenda, e perche vltimamente mi buttò vn altro poliſino dalla feneſtra, per quanto riſeppi fù veduta da vn artegiana teſſitrice in faccia, che non sò come ſi chiami, e queſta lo riferì al Marito, perche la medema Serua eſſendo ſtata licentiata, mi diſſe, che era ſtato rumore in Caſa per la cauſa ſuderta, e che la Sorella di detto Guido maritata in caſa Conti haueua detto di più, che eſſa Serua mi haueua portata la lettera, e che perciò detto Guido diſſe, che voleua ammazzare la

Litt. A.

Litt. B.

Litt. C.

Moglie

Moglie in tutti i modi doppo paſſato qualche tempo, e che anco ſi ſarebbe vendicato contro di mè, & io con queſto motiuo per liberarmi da qualche impegno, e pericolo, & anco per ſaluare dalla morte detta Franceſca, mi riſolſi di venirmene à Roma, & accompagnare la medema quà per condurla da ſuo Padre, e così vna ſera, che non mi ricordo del tempo preciſo, paſſando da Caſa ſua *gli diedi vna lettera, che la tirò dalla fineſtra, ma con vna cordicella*, colla quale l'auuiſauo, che per liberarla dalla morte, io l'hauerei accompagnata come ſopra, & *eſſa vn'altra ſera mi gettò dalla feneſtra vna lettera*, con la quale mi rinouaua l'inſtanza ſudetta, rappreſentandomi, che il Marito tuttauia la minacciaua d'ammazzarla, che perciò hauerebbe riceuuto il fauore, che io gli diceuo di accompagnarla come ſopra. & vltimamente la Domenica vltima del paſſato meſe d'Aprile paſſando auanti Caſa ſua, e ſtando lei alla fineſtra, gli diſſi, che haueuo fermato il Caleſſe per la mattina ſeguente à bon' hora, e che l'hauerei aſpettata alla porta di S. Clemente, conforme alle ſett' hore in circa, venne ſola alla porta ſudetta, & entrati in Caleſſe giraſſimo fuori le mura della Città per andare alla porta di S. Spirito, che và verſo Perugia, che il Caleſſe era di Agoſtino Oſte in Arezzo, che lo conduceua vn Vetturino detto per ſopranome *Venarino* Garzone di detto Agoſtino, che lo feci vſcire la ſera di Domenica all'Aue Maria dalla Città, e poi ſeguitaſſimo il viaggio ſenza pernottare in luogo alcuno, e ci fermauamo tanto, quanto biſognaua rinfreſcare, e mutare li Caualli, fin che giungeſſimo il Martedì à ſera vltimo del ſudetto meſe di Aprile in Caſtel nouo, e perche detta Franceſca diſſe, che ſi ſentiua alcuni dolori, e che non gli daua l'animo di ſeguitare il viaggio ſenza ripoſo, ſi buttò ſopra al letto in vna Camera così veſtita, & io parimente veſtito mi poſi ſopra vn'altro letto, ch'era in detta Camera, con dire all'Oſte, che doppo trè, ò quatr' hore ci haueſſe auuiſato per ſeguitare il viaggio, mà non ci auuisò, e ſopragiunſe in tanto il Marito di detta Franceſca, e ci fece arreſtare dalla Corte tutti due, e dilà poi foſſimo condotti in Roma. *Lett. D.*

Reſpondit. Io non hò parlato in Arezzo à detta Franceſca altre volte, ſe non quanto hò raccontato di ſopra à V. S. *Lett. E.*

Reſpondit. Il Marito della detta Franceſca non mi è parente in grado alcuno. *Amaſius non eſt affinis D. Guidonis.*

Respondit. Io non hò professione alcuna, ma sono Canonico della Pieue di S. Maria d'Arezzo, e sono semplicemente Soddiacono.

Respondit. Quando fui carcerato à Castel nouo furno trouati certi denari, e certi Anelli con altre robbe, conforme la nota fattane dalla Corte.

Respondit. Io non hò mai scritta alcuna lettera alla sudetta Francesca, se non quelle da me dette di sopra.

Respondit. Le lettere mandatemi come sopra da detta Francesca, furono da me abbruciate in Arezzo.

Respondit. Benche nella Carcere di Castel nouo, doue io fui posto fosse fatta diligenza dalla Corte, & anco dal Marito di detta Francesca non vi fù ritrouato cos'alcuna.

Respondit. La sudetta Francesca nel partire d'Arezzo portò seco vn'Inuolto delli suoi habiti, & vna Scattola, nella quale disse, che vi fossero gioie, ma io non le viddi, & anco in vna pezzola con alcuni denari, che furno poi descritti in Castel nouo da quel Cancelliere.

Respondit. Non sò precisamente da chi fossero state scritte le lettere mandatemi da detta Francesca, mà io suppongo potessero esser state scritte da lei, mà non sò se sappia scriuere.

Respondit. A Castel nouo nell'Osteria, & in quella Camera doue ci fermassimo, come dissi nell'altro mio esame, e che ci erano due letti, ne fù accomodato vno solo colle lenzuoli dal Cameriero dell'Oste, perche seruisse per la Signora Francesca, e nell'altro non ci feci mettere lenzuoli, perche io già non voleuo spogliarmi, se bene non si spogliò ne meno lei, conforme dissi nell'altro mio esame.

Respondit. Se io vedessi qualche lettera di quelle da me scritte alla Sig. Francesca sudetta le riconoscerei benissimo.

Respondit. Hò visto, e vedo benissimo queste due lettere, che stanno ligate in questo processo mostratemi d'ordine di V. S. che vna comincia, Adorata mia Signora, vorrei sapere, &c. e finisce, mi hà detto il Conti, & hauendola ben considerata, dico, che questa lettera non è stata da me scritta, benche il carattere della medema habbia quache somiglianza al mio carattere, & hò anche veduta quest'altra lettera, che comincia, Amatissima mia Signora, Riceuo, &c. e finisce questa mia, & hauendola ben considerata, dico, che la medema non è sta-

ta

ta in conto alcuno da me ſcritta, non è mio Carattere, anzi non vi è ne anco ſomiglianza al detto mio Carattere in conto alcuno.

Reſpondit. Io non hò parlato in Arezzo alla Sig. Franceſca, ſe non che tanto quanto gli parlauo dalla ſeneſtra, conforme hò detto nell'altro mio eſame.

Reſpondit. Io non hò mai riceuute altre lettere dalla ſudetta Sig. Franceſca concernenti altra Cauſa, ſe non quella della fuga per venire à Roma, conforme hò detto negl'altri miei eſami.

Reſpondit. Io reſto marauigliato, che il Fiſco habbia pretenſione, che dalla ſudetta Sig Franceſca ananti ſeguiſſe la di lei fuga mi foſſero traſmeſſe più lettere Amoroſe, eſſendo la medema vna Giouine modeſta, e queſte coſe ſarebbero ſtate fuori del proprio ſtato, e della ſua naſcita, e però dico eſſere la ſudetta pretenſione falſa, & inſuſſiſtente.

Reſpondit. Io torno à dire à V. S. che nella Carcere in Caſtel nouo non fù trouato dalla Corte cos'alcuna, e ſe V. S. mi dice, che foſſero trouate alcune lettere Amatorie, le quali poi pretende il Fiſco, che ſiano quelle mandatemi dalla ſudetta Sig. Franceſca, dico, e riſpondo, che non è vero niente.

Indris - All'Illuſtriſſimo Signore Oſſeruandiſſimo, il Sign. Paolo Franceſchini - Roma.

Intus verò - Illuſtriſſimo Signore Oſſeruandiſſimo.

Num. 6. *Epiſtola Reuerendiſſimi Epiſcopi Aretini*.

Vedo quanto piace à V.S. di ſignificarmi intorno alle controuerſie, che paſſano trà il Signor Guido ſuo fratello, & il Sign. Comparini, e non poſſo non compatirle per il diſturbo, che ne deriua à V.S. in vn caſo così raro, e forſe ſenza eſempio. Fece qualche ricorſo à me la Signora ſua Cognata, ma sì come il calor grande, che haueua con vna ſouerchia paſſione della madre, mi appaleſorno, che la figlia faceua queſto paſſo per pura inſtigazione, così procurauo di appiaceuolirla, penſando, che tolti i fomenti, ſi ridurrebbe al giuſto, potendo tanto più facilmente crederlo, quanto che la ſua tenera età, tanto diceua, e tanto reclamaua, quanto era forzata à farlo per il fomento della Madre, e perche non ſi eſaſperaſſe anche queſta maggiormente, la feci accompagnare ben due volte à caſa dalla mia Carrozza. Haueuo qualche cognitione di ciò perche il Signor Senatore Marzi Medici, che preſiede al gouerno Laico in queſta Città per il Sereniſſimo Gran Duca, mi

mi haueua communicato il tutto, e non mi reſta da ſoggiungere altro, ſe non rapportarmi à quanto il medemo ſopra ciò gli hà ſinceramente ſcritto, e bramando nuoue occaſioni di ſeruirla, mi confermo

Di V.S.

Arezzo 15. Settembre 1694.

Deuotiſſimo Seruitore
G.M. Veſcouo d'Arezzo

Amato mio Signore.

Num. 7. *Epiſtolæ Amatoeiæ reciprocæ. prima fol.* 10.

Non moltiplico atteſtati per accreditarui il mio amore, perche à ſufficienza n'è teſtimonio la mia riſolutione, & il voſtro merito. Il mio affetto non hà più freno &c. Di gratia la renda à chi glie ne porge.

Mio Signore.

2. 11 Li dico, che non prenda ammiratione, ſe la Signora Madre ſtaua alla fineſtra, perche ammiraua à quello, che aſſettaua la canepa, e però V.S. ci puol paſſare ſenza paura. Io più à bell'agio li ſcriuerò delle belle coſe &c. quando mi diranno niente, lo farò auuiſato à V.S.

Adorato Mirtillo, Anima mia.

3. 12 La prego à perdonarmi, ſe io non vi mirauo, quando eri alli Cappuccini, perche io vedeuo, che tutte due mirauano, ſe io vi mirauo, e per queſto io patij pene in non poter mirare il mio Sole; ma mi vedeuo col mio core, nel quale vi tengo ſcolpito. Reſto qual ſono, e ſarò

V. deuota Seru. e fedele Amante
Amarilli.

Amato mio bene.

4. 13 Io riceuo la ſua, quale mi dà molta pena &c., che il geloſo vedeſſe le lettere, le vidde, ma non le aprì, che erano ſtrette inſieme, e lui creſe, che fuſſero altre carte, e non le preſe in mauo,

no. Questo lui lo dice, perche vorria, che voi vi adiraſſi con me &c. Poi voi mi dite, ſe io ſono del medeſimo penſiero, & io vi dico, che sì, che ſe voi non ſete mutato, io ſono pronta à fare quello, che io hò detto &c. Poi in circa, ſe ſi ſeguita à bere il vino roſſo, vi dico di sì. Se voi ſete del medeſimo penſiero: Se poi ſete pentito, io ſono contenta di fare quello, che volete voi &c. reſto quale ſono

4.

Fedele Amante. 13. 19.

Amatiſſimo mio Signore.

Io non sò per qual cauſa non paſsò di quà hieri ſera, che io mi feci alla fineſtra, e non viddi neſſuno. Io mi leuai dalla fineſtra, perche vi era il Canonico mio Cognato; Mi leuai per andare all'altre fineſtre, acciò non mi vedeſſe &c. Ma voltaſte in verſo la porta, ſtrada voſtra amata, perche ci, è chi adorate Il Conti mi hà chieſto quelle ottaue, che mi hauete date &c., però ditemi, ſe io le hò à dare, ò pure rirenercare per me, e reſto qual ſono, e ſarò 14. 5.

Fedele, e fedeliſſima Amante
Amarilli.

Mi ſcordauo dirli, che la Signora Madre non hà più febre, e beue il vino, ma da ſe, pure è roſſo, come il noſtro, pure ditemi quello hò à fare, che io lo farò. Laſciauo di mandarui vn millione di baci, ma sò, che in queſto modo non vi ſono cari, e poco, ſe ve li daſſi da me, ma quelli della Cantarina vi ſono cariſsimi, ma vi dico, che ſono auuelenati &c., e fate lo ſcrupoloſo con l'altre, come hauete fatto con me, che con l'altre ne hauerete ragione. ma con me non ne haueuiuo occaſione &c. 15. 6.

Oſſeruandiſſimo Narciſo.

Queſta ſera riceuo la ſua, e mi dà gran conſolatione il ſentire, che non ſete adirato &c., non sò quando me la darà, ma ſe me la dà, la darò à voi. Il Geloſo è di fuori, e ci ſarei ancor io, e tutti, ma perche la Signora Madre non troua vna Seruai &c. hauno detto, che ci vonno ſtare vn pezzo, perche voi mi vſcite di mente per non vederui per vn pezzo; Ma chi ſi ama 16 7.

di

di buon cuore, si tiene à mente, così farò io, prego V. S. à perdonarmi, se mi stendo troppo per scriuere troppo spesso, rassegnandomi quale sono

Deuotissima Serua, e fedelissima Amante resto.

Amatissimo mio Signore.

7. 16. Si puole immaginare con qual presciа io vi scrissi quelli due versi &c. M'incontrai col Signor Dottore, come al solito, mi disse doue io andauo, e per la strada mi disse, perche gl'haueuo scritto dispettosa, io gli disi, che meritaua peggio, perche faceua fatti cattiui, e buone parole, perche diceua di volermi bene, e poi lo vuole alla Souara, & altre &c. mi rispose che non veniua da questo, ma per cagione di vn'altro Signore, che ci voleuo bene, più garbato di lui. Io gli disi, che se non era garbato quanto lui, almeno più fedele &c. professandomi quale sempre fui fedele.

Mio adorato, e riuerito Signore.

8. 17 Sono con questa mia à scusarmi dell'errore, che hò commesso in sigillare quella lettera, che andaua à Roma &c., dico à V.S., che non mi hanno trouato nessuna lettera, perche io non le metto nella cassa, ma bensi le dò alle fiamme, & in quel tempo, che io le tengo, le tengo in seno, e questa non è scusa, perche lei faccia riflessione à vna mia, che vi dico, che gli dò luogo nel mio seno &c. in quanto, che vno di loro fosse alla gelosia, forse lo credo, però voi non fate gesto nessuno, quando sete sotto le finestre Io questa sera farò alla finestra, ò pure alla gelosia, e quando vi vedrò, mi farò alla finestra, ma bisogna, che stia auueduta, che lui non mi veda, che mi hà detto, che se mi vede vuol far tante cose, che non ne fece tante Enea Troiano. Io per non darli sospetto, non ci stò, mi professo

Deuotissima Serua.

Sospi-

Sospirato mio Bene.

Se il dire, che io non vi amo non è errore, per non conoscermi, ma questo per non gradirmi, consentite mio caro, che io mi sdegni con voi, perche ò mi riputate cieca, ò non mi riputate amabile. Non potete dire con verità, che io non vi ami, ò potete dire con verità, che non si ama tanto, quanto io amo voi. Miratemi ne' miei occhi, che reca meraviglia tersi dalle mie lacrime vi saranno fedelissimi specchi, scorgerete, che il vostro volto è copiato, nella quale fè di lui abbozzature nel Sole, che la vostra bianchezza neuicata in sito della via lattea, che le gratie vi hanno regolato i mouimenti di propria mano, che Venere nel formarui ha presa la misura col proprio cinto delle vostre membra. Ah, che io vi amo, in maniera, che da vn canto vorrei amarui sola nel Mondo, perche mi pare poterui amare per tutti dal Latio centro. Vorrei, che tutti vi amassero, perche vedesti, che posti tutti insieme non giungono all'amor di me sola. Il mio petto è inuidiato da qualunque altra parte di me, quasi habile sia solo ad amarui. Sono cose da non saversi vdire, sono cose da rendere scusabile à qualunque altro, che non lo creda; Ma voi bello crudele, che se vi vedete il volto composto di miracoli Angelici, non douete stimare menzogna, che si troui vn core fabricato d'amorosi miracoli &c. vi lascio mille, e mille baci. 8. 9.

Amato mio Bene.

Lascio andare li complimenti per non poter corrispondere alli suoi versi tanto galanti, tutto il contrario di quello, ch'io merito. 19 10.

Lei mi dice, che vuol sapere ciò, che è seguito in casa, io vi dico, che non vi è seguito niente per quanto mi posso auuedere, perche non mi hanno detto niente nessuno di loro. Ma il Signor Guido mi par più tosto in bona con me, che alterato, e perciò non posso vedere, se sijno stizzati con me. Mio Cognato serri la porta, lo fà più volte &c. Se poi non ci volete passare più, questo è vostro arbitrio, et io prenderò in piacere quelle pene, che vi sono grate, e perciò io vi dico, che fate quello, che volete, che come l'oro nel foco, così l'Amo-

sì l'Amore nel dolore si affina, posso ben dire, che patirò pena à non vederui, come ero solita &c., e dandoui vn'amoroso bacio, resto quale sempre fui fuisceratissima Amante. e fedelissima Serua.

Mi si era scordato auuisarui, che stò nella medema stanza di prima, e Giouedì sera andai à letto à due hore di notte, e perciò lei non mi sentì entrar in Camera. Dissi alla Serua, che facesse li segni, che era restato di fare &c.

Sabato mattina tornò il Sig. Guido, e lei potrà passare la sera à quattr'hore, ò prima, che vedrà il lume in Camera &c.

Carissimo mio Bene.

11. 20. Riceuo la sua à me gratissima, come tutte l'altre mandatemi &c. Sento, che lei hà hauuto caro il Pastor Fido. Mà vorrei, che lei lo imitasse, & io imitarò vn' altra Vienna. Sento da lei, che vorrà venire à vedermi alla Villa &c. che vorrei poter fare io, vi sarei più volontieri per Sposo, che per Seruo. Lei mi dice, che il Conti non vuol portarui più lettere, vi fò sapere, che io li fò due vezzi, e mi abasta l'animo di fare, che ve le porti, perche io gli dico due buone parole, e lui s'incanta, e farrà quello che io vorrò. Mi dice, che li mandi la corda per la Gelosia, mà non mi dice la sera &c. Li faccio sapere, che il geloso è ito à Souara, s'io vi potessi parlare; mà il Confessore non vuole in conto nessuno, e per questo io non vi ci faccio venire, che hora non si apre più l'vscio di strada; mà potrete aprire quello della Rimessa &c. Mà quel Frate non vò, e non vole. La ringratio delli Baci, che m'inuiate; mà se me li dassiuo da voi, gli hauerei cari, & io ve ne dò altri, e tanti millioni di quanti me ne date voi &c.

Fedelissima Amante.

Io non sò, che nome mi dare ò Vienna, ò Amarilli, ò Dorinda, ò Lilla, mà voglio dirmi Arianna, quale credo d'hauere à essere, voglio dirmi tale, se pure voi non sete vn Teseo, mà vn casto Giuseppe, ò vn caro Narciso, ò vn Ilago, ò Fedone; mà Adone fù pietoso con Venere, mà io non sono tale; mà bensì vna Medusa. onde merito &c. Se voi hauete letto il Tasso lo saperete chi fù questo &c.

Amato

Amato Idolo mio.

Sento le coſe, che vi ſono occorſe, io non l'hò per male, mentre lei dice, che non ſi puol fare dormire mia Madre, mentre ſtà male, e non beue vino, e perciò non poſſa dormire. Puol eſſere, che in queſti giorni guariſca, pure glie lo farrò auuiſato, &c. 12. 21.

Fedele Amante
Amarilli.

Adorato, riuerito, amato mio Core.

Mi confondo in tante lodi &c. mi ſcriua più ſpeſſo, che puole. Circa il Dottore, lei m'offonde in dirmi, che io torneriò ad amar lui; Vi dico, che ſe naſceſſe al Mondo vn Sole, non hò Cuore per altra Piaga; mà chi mal fà, mal penſa &c. In quanto à quello, che vuol ſapere del *Vino*, vi dico, che è roſſo per hora: mà più in quà non sò, come ſarà; mà ve lo farò auuiſato, mandandoui mille, e mille, e mille, e millioni di baci, reſto. 13. 22.

Queſta ſera venite ad vn' hora di notte, che vi voglio parlare, e toſſite quando ſete ſotto la fineſtra. 14. 26.

Amarilli.

La Sgrana perche non poteua dire, come dite quì, che era di latte che lei è nera più di mè, ſe fuſſi voi vi potria dire Auorio, come vi chiamo Io; Auertite, che la ſerà non ſia il Geloſo, e non io, però io toſſirò, ſe non ſentite toſſire non vi mouete.

Vi faccio ſapere, che il Sig. Guido và fuora, ci ſtarà più giorni; Però la prego venire la ſera quaſi ad vn hora di notte, e come ſete ſotto la feneſtra, toſſite, e fermateui vn poco, acciò io non sbagli. Lui và fuori Lunedì mattina &c. 16. 28.

Cariſſimo, meritiſſimo mio Amore, mio Bene.

Rendo infinite gratie della Roſalinda &c. Vorrei ſapere, che cenni mi fece per la via del Poggio &c. e non perche io voglia far proua del voſtro Amore, che sò molto bene, che ſete coſtante quanto mè, e però io non voglio far queſte proue &c. ſiche voi non potete dire, che io non vi voglia più bene, *perche tutto quello, che voleuo al Signor Guido è volto à voi, che lo meritate*. 17. 29.

Amarilli.

Ado-

Adorata mia Signora.

18. 30. *Litteræ Amasij.* Vorrei ſapere, ſe Domenica ſera, cioè dimani à ſera potete partire, perche ſe non ſi parte dimani à ſera, Dio sà quando ſi potrà per la ſcarſezza de Caleſſi, douendo Mercordi partire il Veſcouo con trè Caleſſi, perciò ſe potete *partire, ſubito* letta queſta mia ritornate alla fineſtra, e gettatemi la medema per ſegno, acciò fermi vn Caleſſe auanti, che ſia fermato da qualchedun' altro, & io ſe fermarò il Caleſſe dimani, nel paſſar di coſtì mi laſcerò cadere la pezzuola vna ſol volta; del reſto poi dimani à ſera io mi tratterrò dalle due di notte ſino à quanto biſognerà, e lei *ſubito*, che vede, che ſono dormiti bene, mi aprirà, acciò gli poſſa dare aiuto à far li fagotti, e mettere aſſieme i denari, ſopra il tutto *cerchi di metterne in tuti i Boccali, e lei non ne beua, e ſe per cattiua diſgratia laſcopriſſero, e la minacciaſſero di morte, opra pure la porta, che, ò morirò con voi, ò vi liberarò dalle loro mani, e pregando il Signore Dio, che ci facci riuſcire bene queſto noſtro diſegno, mi ratifico per ſempre voſtro fedeliſſimo Seruitore, & Amante.*

Mirtillo.

19. Che il Geloſo ſi moſtri rappacificato, e che habbi detto, che ſtiate alla fineſtra, è vn cattiuiſſimo ſegno, perche in queſto modo vorrà ſcoprire coſa fate alla fineſtra, & à che fine ci ſtate, perche mi hà detto il Conti, che hora è più geloſo di prima, e che ſe viene in chiaro di nulla, ſi vuol vendicare con darci la morte, e che vol procurare di fare il ſimile à mè, e queſto è quello, che ſucceſſe, ci è ſeguita poi la rottura della corda.

Amatiſſima Signora.

20. Riceuo i ſuoi caratteri abondanti di quelle eſpreſſioni, (e ſeguitano parole amoroſe.) Si compiaccia riceuermi nel ſuo ſeno, nel quale ripoſo tutti i miei affetti &c. Conſegni alle ceneri queſta mia.

Riuerito Signore.

Alia littera Franciſcæ. 21. 32. Spinta dall'affetto, che io porto à V.S. ſono ſforzata di contradire à quello gli mandai hier ſera in quella lettera, che gli diceuo, che io non voleuo più dirle, che lei ci veniſſe, ſe non lo diceua lei, hora le dico, che vorrei, che lei ci veniſſe queſta

ſta ſera all'hora di hier l'altra ſera, perche io hò penſato, che le Torri non ſi mouono così à colpi leggieri, ſe lei ci vol venire, purche non ſia occaſione, che lei manchi di parola à qualche ſua amata Donna, ò pure gli ſia d'incommodo, quale io non vorrei eſſer cauſa; però ſe ci vol venire, ripaſſi di quì ſubito, che lei l'hà letta &c.

Die Martis 24. Septembris 1697.

Num. 8.

Ioſeph Maria Caponſacchius de Aretio pro complicitate in fuga, & deuiatione Franciſcæ Comparinæ, & cognitione carnali eiuſdem relegatus per triennium in Ciuitate Vetula. *Decretum Relegationis Amasij.*

Illuſtriſs. & Reuerendiſs. Dño

Vrbis.

GVBERNATORE

In Criminalibus.

Romana Homicidiorum.

P R O

D. Guidone Franciſchino, & Socijs Carceratis.

Summarium.

ROMÆ, Typis R. Cam. Apoſt. 1698.

Ill.me, & Reu.me Dñe. CONfeſſio D. Guidonis, & Sociorum ſuper homicidijs Franciſcæ vxoris, & Petri, ac Violantis de Comparinis ſoceri, & ſocrus tantùm abeſt, quod Fiſco opituletur ad exigendam pœnam ordinariam, quin potiùs nobis mirificè faueat pro excluſione illius pœnæ, quia non ampliùs eſt ambigendum de cauſa homicidiorum, nempè honoris, quæ primò à Fiſco controuertebatur ob concurſum aliarum cauſarum, quamuis vel eſſent inefficaces, vel de directo lædentes honorem, vt infrà illotis manibus non pertranſibimus; nam confeſſio acceptanda eſt cum omnibus ſuis circumſtantijs, nec ad ſupradictum effectum patitur ſcindi, *Menoch. de Arbitr. caſ.279. num.6. & ſeq.*, *Clar. §. fin. q.55. num.16. verſ. fortè poſſet*, *Gomez. var. reſol. tom.3. cap.3. n.26. poſt medium verſ. vnum tamen eſt*: *Farinac. quæſt.81. num.157.*, *Guazz. defenſ.32. cap.35. num.1. verſ. ſed contrarium, & nu.2.*, *Sperell. deciſ.64. num.16. par.1.*; *& deciſ.108. nu.36.*, *& deciſ.136. uum.27. par.2.*

Quod pro certo ſufficeret, vt mitiùs cum Eo, & Socijs ageretur, attento quod cauſa honoris eſt ſufficientiſſima ad leniendam pœnam, vt in alia probauimus, quod ſcilicet abſque incurſu pœnæ vltimi ſupplicij poſſit Maritus etiam ex interuallo obtruncare Vxorem Adulteram, quotiès adulterium probetur, vt Dominus meus Fiſci Aduocatus concedit in eius Reſponſione §. *Solamque ſuſpicionem*.

Et in rei veritate adduximus in alia quamplurimas Supremorum Senatuum Deciſiones, quibus liquet fuiſſe minoratam pœnam Maritis, qui etiam mediante Aſſaſſinio occidi fecerunt Coniuges, & viceuerſa nulla affertur Deciſio Fiſco fauorabilis; Qualis ſententia eò libentiùs amplectenda eſt, quia à maiori numero DD. canonizatur; Et licèt *Farinac.*, & Dominus meus *Raynaldus* contrariam ſectari videantur; nihilominùs *Farinac. in ſuis quæſtionibus* nimis ſe dubium reddidit, vt in alia oſtendi, *& in conſ.141.* nimis inconſtantem ſe præbuit, dum *in conſ.66. num.5.* contrarium probauit: Quamobrèm de huiuſmodi inconſtantia admonitus ſe excuſando aſſeruit *in d.conſ.141. ſub num.16.* Beatricem, pro qua ſcripſe- *Beatrice Cenci.*

rat

rat *in conſ. 66.* fuiſſe capite obtruncatam, quaſi quod huiuſ modi rigoroſa ſententia in practica ſeruetur, ſed parcat mihi tam eximius Doctor, nimis incongruè reſpondit oblitus, quæ in fine *d. conſilij 66.* ſcripta reliquerat, hoc eſt fuiſſe punitam Beatricem pœna vltimi ſupplicij, non quia ex interuallo occidi mandauit inſidiantem ſuo honori, ſed quia eius exceptionem non probauit ibi-- *Prout, & idem firmitèr ſperabatur de ſorore Beatrice ſi propoſitam excuſationem probaſſet, prout non probauit.*

Dominus verò *Raynaldus*, cuius ſcripta, & verba veneror *in ſuis Obſeruationibus Criminalibus cap.2. §.4.num.156.* præterquamquod aſſerit ex benignitate Principis ſperari poſſe remiſſionem ſaltem quoad pœnam ordinariam, non decidit articulum afferendo *Gizzarell.*, & *Giurbam* firmantes debere ex iuſtitia pœnam minorari, ſed ſe remittit ad ea, quæ ſcripſit *cap.7. in Rubrica ſub num.* 60. vbi tamen ex profeſſo non examinat articulum homicidij admiſſi ex cauſa honoris, aliàs contrairet communi ſententiæ Doctorum, & tot Deciſionibus Supremorum Magiſtratuum, hoc eſt Communi Tribunalium praxi, de qua etiam teſtatur *Clar.§.Homicidium ſub n.51.* ibi-- *Et hæc opinio ſeruatur in practica, prout in contingentia facti reperio iudicaſſe Curiam Neapolitanam.* Et de eadem praxi ſimilitèr teſtatur *Mabbèa de re crimin. controuerſ.12. num.29.*

Quamuis nobis ſufficeret, vt dixi, quod D. Guido non ſit legitimè conuictus, vt eius confeſſio in totum ſine diuiſione acceptetur: Nihilominus ad abundantem adducimus plenas probationes Adulterij ex Proceſſu fugæ reſultantes, quas ne Fiſcus daret manus victas impugnare conatur, & Achilles ſuæ prætenſionis eſt vnicum examen ad perpetuam rei memoriam in Proceſſu non redactum, ſed extrà vagans cuiuſdam vilis mulierculæ olim famulæ in domo Inquiſiti ab ipſo, à D. Canonico eius fratre, & ab iſtorum matre percuſſionibus malè mulctatæ, nimis affectatè recenſentis peſſima tractamenta facta Petro, & Violanti de Comparinis, ac Franciſcæ eorum filiæ, & vxori reſpectiuè, præcipuè circa victum, qua de cauſa Petrus, & Violantes ſatiùs duxerint Romam reuerti, *Summar. Fiſci num.* 1. quamuis D. Guido per Inſtrumentum ſe obligaſſet prædictis Coniugibus alimenta præſtare; Et inſupèr infertur neceſſariam fuiſſe fugam Franciſcæ minis

minis mortis affectæ, vt ex ea deduci nequeat praua voluntas violandi matrimoniale fœdus.

Sed si veritatem amamus res familiaris inquisiti non est adeò angusta, vt nedum ad frugaliter, sed etiam ad lautè viuendum non exuberasset, vt demonstrat furtum pecuniarium à Franciſca in actu fugæ commissum, vt *in Processu fugæ fol.* 5. 63. 92.

Causa vera, & realis, quæ mouit Petrum, & vxorem ad regrediendum Romam ea infallibiliter fuit, quia mater D.Guidonis tolerare non potuit, quod prædicti Coniuges de Comparinis rem domesticam moderarentur, & ad eorum libitum disponerent omnia ad gubernium domus spectantia, quod flagrantissimè, sed non minùs audacter cupiebant, & quia malè insuper ferebat Petrus reprehendi, quod relicta Nobilium Conuersatione cum vilissimis assiduè non sine honestorum Virorum scandalo ad Cauponas se sociabat, & fortiùs, quia coactus fuit à Præside Ciuitatis carcerationis metu restituere iocalia, & gemmas eius filiæ ablatas, vt D. Guido in suo examine deposuit 96. & 97., & mirificè comprobatur ab epistola eiusdem Præsidis à nobis nuper producta, quam damus *in Summar. num.* 1.

Quibus adstipulatur examen iudiciale eiusdem Franciſcæ in fuga carceratæ, in quo nullibi legitur fuisse malè tractatam, nec vnquam conquesta est de domus decantata paupertate, & nihilominus est valdè probabile, quod ad cohonestandam fugam deduxisset necessitatem rei domesticæ, & miseriam domus, si quam passa esset.

Non negamus ortas subindè fuisse contentiones inter Franciſcam, & Virum, & forsàn istum fuisse illi mortem minatum, sed ob aliam causam, vt scilicet inceptos illicitos amores à genitoribus suggestos desereret, & honestè, vt par erat, viueret, vt expressè legitur in eius depositione *Summar. nostro num.* 2. *litt. A.*

Hinc verificatur, quod ipsa Franciſca in epistola scripta Domino Abbati Franciſchino ingenuè fatetur *Summario Fisci num.* 4., *& nostro num.* 3. quod scilicet eius genitores seminabant zizanias inter ipsos sponsos, & suadebant recursum ad Reuerendissimum Episcopum sub falso commento malorum tractamentorum, atque die, noctuque instigabant, vt virum, cognatum, & socrum veneno abigeret, domum comburet,

ret, & quod horribilius eſt, captaret Amaſium, *in* cuius ſocietate Romam rediret, quemadmodum obedire in iſtorum pluribus non neglexit.

Et in alia Epiſtola eidem Abbati ſcripta, atque per nos exhibita, & data *Summario n.*4. ibi-- *non hauendo hora chi mi fomenti al male.*

Inanis eſt reſponſio, quod ſingula elementa dictæ primæ Epiſtolæ fuerant priùs deſignata per D. Guidonem, & deinde ſuperinducto per eam calamo efformata, vt ipſa aſſerit *dicto Summario noſtro num.*2. *litt.K.* Ad quorum comprobationem nil aliud deducere valuit, quàm ſcribere neſcire, *d.Summar. num.*2. *litt. B. H. &* K.

Nam præterquamquod de mendacio apertiſſimè remanet conuicta ab eius ſuſcriptione ab ipſa recognita in mandato procuræ in carceribus, vt in Proceſſu fugæ *fol.* 39., & ab alia ſubſcriptione in capitulis matrimonialibus, de cuius veritate nefas eſt diſceptari, tum quia adeſt ſubſcriptio vnius ex Dominis Cardinalibus, tum etiam quia fuit recognitus pariter eius caractther ab eadem ſubſcribente per rogitum Notarij, vt in copia relicta in Proceſſu *fol.*132., & inſuper conuincitur ab Eccleſiaſtico, cum quo fugam arripuit, aſſerente non ſemel nocturno tempore recepiſſe epiſtolas proiectas ab ea è feneſtra, aliaſque miſsas per famulam, cuius depoſitionem damus *in noſtro Summario num.*5. *litt. A.B.C.D.* quod verificatur à Teſte Fiſcali *fol.*108. ibi-- *E tirò giù vna carta, che beniſſimo la veddi, & il Signor Canonico la raccolſe, e ſe ne andò*: præter epiſtolas, & ſchedas repertas in carcere Caſtri Noui, vbi ipſi reperiebantur, continentes mutuum amorem; Vnde impoſſibile redditur, quod illarum elementa pariformiter fuiſsent ab eius viro deſignata, nec docetur à quo fuerint ſcriptæ, proinde præſumendum eſt fuiſse ab ipſa exaratas, ne patefaceret amores vetitos, qui occultari ſummo ſtudio debuiſsent: Et quæſo ſubijciatur oculis prædicta epiſtola, & benè agnoſcetur, an ad imitationem ſignorum fuerint atramento efformata elementa à ſcribere neſciente, vel potiùs ab experta manu mulieris.

Primordium veritatis dictæ epiſtolæ, de qua loquimur, deprehendimus ab eadem epiſtola Præſidis Aretij, *dicto noſtro Summario num* 1., vbi habetur-- *diſcandalo molto maggiore ſono ſtate le fughe, e ricorſi fatti dalla Signora Spoſa loro figlia à Mon-*

Monſignor Veſcouo, non con altro motiuo ſe non, che nè eſſa, nè li ſuoi Genitori voleuano dimorar più in Arezzo, mà tornarſene à Roma, ſgridata però da queſto prudentiſſimo Prelato, la rimandò ſempre à caſa in carrozza.

Idque ſimiliter expreſsè deſumitur ab alia epiſtola Reuerendiſſimi Epiſcopi, quæ datur *in Summario num.6.* ibi-- *e tanto reclamaua, quanto era forzata à farlo per il fomento della madre.* Et paucis interiectis ibi: *haueuo qualche cognitione di ciò, perche il Signor Senatore Marzi Medici, che preſiede al Gouerno Laico di queſta Città per il Sereniſſimo Gran Duca mi haueua communicato il tutto.*

Verificatur vlteriùs per aliam epiſtolam D. Bartholomæi Albergotti exaduerſo producta, quæ datur *in Summario Partis num.2. in fine*, ſed non integra, ibi enim habetur per Secretarium Reuerendiſſimi Epiſcopi fuiſse exhortatos D. Guidonem, & eius matrem ibi: *A non ſtrapazzare la Signora Spoſa dell'affronto fattoli, baſta dopò tante biſticcie riconduſſe la Signora Spoſa à caſa, & ella ſi è dichiarata di non volere ſtare aſſolutamente colla Signora Beatrice, nè col Signor Canonico Girolamo ſuo Cognato*, & poſt pauca: *Io ſupplico V.S. Illuſtriſſima, e l'Illuſtriſſima Signora Violante à volerui porre rimedio, con inſinuare alla Signora Spoſa vna pace tranquilla per quiete di tutti*, vt *in fol.190. ter.*

Quod comprobatur ab epiſtola D. Abbatis exaduerſo producta *fol.* 182. ibi: *Dal Signor Guido mio fratello gli ſono ſtate fatte diuerſe offerte, non ſono ſtate accettate, e ſi pretende, che noi douiamo obligare la noſtra Signora Madre, e Signor Canonico ad vſcire di Caſa; queſto non ſarà mai vero, ſe pure non ſeguiſſe d'amore, e d'accordo; mà io non ce li configliarò.*

Et ab epiſtola D. Romani 188. *à ter.* ibi: *Hò ſaputo per qual cauſa fuggì da Monſignore, & è queſta che non vuol ſtare colli Signori Canonico, e Beatrice &c.* quæ verba *in dicto Summario Fiſci num.2.* non adnotantur.

Eccè igitur, quod Franciſca non malè tractabatur, quamuis malè tractari mereretur ob affectatum, & indecentem recurſum ſine cauſa ad Reuerendiſſimum Epiſcopum, prout patet an ex malis tractamentis prædicti Coniuges de Comparinis diſceſſerint ab Aretio, & Franciſca aufugerit.

Reſtat modò, vt videamus ceſsantibus malis tractamentis, quam nam cauſam Franciſca habuerit aufugiendi à domo vi-

ri, ſiue potius, an ſcandaloſa fuerit eius fuga, quod non erit difficile agnoſcere, ſi parumper immoremur in depoſitione eiuſdem Franciſcæ, & in litteris repertis in dicto carcere Caſtri Noui, quæ productæ per Fiſcum in Proceſſu, licèt non fuerint recognitę eius negligentia nobis officere nequit, nec ideò puto poſſe controuerti eſſe eiuſdem caractheris, ſi conferantur cum caracthere certo mandati procuræ, vltra quod veluti continentes amores, & nomen ipſius Guidonis, nemo prudens cenſebit non fuiſſe ab eiſdem ſcriptas.

Ex eius enim depoſitione depromitur fuiſſe ſæpius obiurgatam ob eius ſterilitatem, & fuiſſe minis mortis perterritam cauſa amorum cum dicto Eccleſiaſtico, vt *dicto Summar. n.2. litt.A.* nec fallebatur cautus vir, dum in dies creſcebat amor, imò coniugalis affectus diminutus erga virum, augebatur erga Amaſium; In dictis enim litteris, quæ dantur *in Summario num.7*, Ille Eccleſiaſticus vocabatur *Amatus*, *Adoratus*, *Mirtillus*, *Anima mea*, *Amatiſſimus*, *Narciſsus*, *Suſpiratum bonum*, *Chariſſimum Idolum*, & ſubſcribebatur-- *Fidelis Amans Amarilli*, & è conuerſo ab Amaſio vocabatur *Adorata mia Signora*, & in earum ſingulis exprimitur intenſus amor, & amoris ardor, quo vexabatur infælix pro Amaſio, vt videre eſt, nec ſine pudore ſingulas expreſſiones amoris tenerrimas referrem, ſed tantùm vnam, vel alteram non omittam, vt ab vngue Leo dignoſcatur, vt in epiſtola 17. ibi: *ſiche voi non potete più dire, che io non vi voglia bene, perche tutto quello, che voleua al Signor Guido è volto à voi, che lo meritate*. Et hæc forsàn eſt cauſa cur renuebat iacere cum viro, vt annuit dicta epiſtola dicti D. Albergotti ibi: *La Signora Spoſa quì ſtà malinconica, e due ſere dopò la partenza di lor Signori fece ſtrepito grande, perche non voleua andare à dormire col Sig. Guido ſuo Conſorte, il che mi diſpiace aſſai: fol.190.*

In prima Epiſtola, ibi -- *Il mio affetto non hà più freno* -- In quarta -- *Io ſon pronta à far quello, che v'hò detto* -- In decima-- *Prenderò in piacere quelle pene, che vi ſon grate*; & longum eſſet, & nimiam nauſeam afferret ſingula recenſere; Malè enim ferebat caſtis moribus Aretij ſe conformare, aſſueta liberiorem vitam traducere, vt legitur in Epiſtolis Domini Abbatis Franceſchini exaduerſo productis *fol. 179. tergo*, ibi -- *Quelle occaſioni, che ſiano ſtate di amarezza trà V. S. & il Signor Guido io non le voglio eſaminare, sò ben dire, che*

che se è proceduto per volere indrizzare alle costumanze della Patria la Signora Sposa, questo può, e deue farlo il Marito, si perche sopra la Moglie gli dà l'auttorità Dio, si come perche è pratico delle vsanze, e tratti della Patria, che se V.S. & il Sig. Pietro ne lo impedissero farebbono male, & al Marito tocca auuertir la Moglie -- Et in alia *fol.*124. ibi -- *Ne mi posso persuadere, che li miei Madre, e fratelli si portino in forma tale, che obblighino à fare simili trascorsacci* -- Et post pauca, ibi -- *Et apprendere, che quello da i miei si andaua insinuando alla Signora Francesca al Sig. Pietro, & à V.S. non era se non per puro zelo del decoro della Casa, e loro.*

Viceuersa in litteris dicti Ecclesiastici idem desumitur, vt in Epist.20.ibi -- *Riceuo i suoi caratteri abondanti di quelle espressioni &c. si contenti riceuermi nel suo seno nel quale riposo tutti i miei affetti* -- Et quæ pertinent ad fugam reddu it clariorem Probationem mutuæ vicissitudinis, vtpotè verificata ab effectu sequuto, vt in Epistola 18. ibi -- *vorrei sapere se Domenica à sera, cioè domani à sera potete partire, perche se non si parte domani à sera, Dio sà quando si partirà per la scarsezza de'Caleffi* -- & paucis interpositis -- *E lei subito che vede, che sono dormiti bene, mi aprirà, acciò gli possa dare aiuto à fare i fagotti, & à mettere assieme i danari* -- Et post pauca -- *Pregando il Signor Iddio, che ci facci riuscir bene questo nostro disegno.*

Et Epistola 19. eiusdem Amasij, qua dantur Amatæ documenta non obscure etiam nos edocet cuius qualitatis essent Amores, ibi -- *Che il geloso si mostri rappacificato, e che habbi detto, che stiate alla finestra, è vn cattiuissimo segno, perche in questo modo vorrà scoprire cosa fate alla fenestra, & à che fine ci state; Mi hà detto il &c. Che hora è più geloso di prima, e che se viene in chiaro di nulla, si vuol vendicare con darci la morte, e che vuol procurare di fare il simile à me.*

Comprobatur vlterius, quod iste miser Inquisitus deplorabiliter exclamat non vno tantum Amasio Aretij fuisse contentam, sed à pluribus Procis coinquinatam, vt vituperia eius Domus multiplicaret *fol.*98. *tergo*, Dum non obscurè legitur in septima Epistola, ibi -- *Mi incontrai con il Signor Dottore, come al solito, mi disse doue andauo, e per la strada mi disse perche gl'haueuo scritto dispettosa, Io gli dissi, che meritaua peggio, perche facea fatti cattiui, e buone parole, perche diceua di volermi bene, e poi lo vuole alla Souara, & altre*, & in 13. ibi --

circa il Dottore lei m'offende con dirmi, che io tornerò ad amar lui, vi dico, che se nascesse al mondo vn Sole, non hò cuore per altra piaga.

Patet igitur an honestam Causam Franciſca habuerit diuertendi à Domo Viri ſiuè potius concitata fuerit à vehementibus amoris calcaribus; dicatur modò, quod ad bonum finem huiuſmodi litteræ miſſæ fuerunt, vt alliceretur Eccleſiaſticus ad eam aſſociandam, vt euitaret mortis diſcrimen, in quo ex iniuſta cauſa reperiebatur, & quod potuerit in Societate Amaſij tutum ſeruare pudorem, dum pro certo amoroſæ expreſſiones factæ in dd. Epiſtolis non præferunt caſtitatem Animi, & pudicum affectum, & ſanè deficiente cauſa iuſta fugiendi, corruit velamen, quo ſalacitas obumbrari prætendebatur. Fateor Iuditham caſtiſſimam Viduam decora facie, & vndiquè ornatam perrexiſſe ad hoſtem ſalaciſſimum, ſed ad explendum pium opus ad liberandam ſcilicet Patriam non præmiſſis laſciuis litteris, ſed orationibus feruentibus munitam, de cuius illibata pudicitia nefas fuit ſuſpicari, cum imò afflatu Spiritus Sancti impulſa extiterit; Hodiè verò per quam paucæ inueniuntur Iudithæ, ſed multiplicantur filiæ Loth, quæ ſi cuſtodire proprium pudorem in commenſalitate patris non valuerunt, imò ne ſobrius negaret, quod impotenter effiagitabant, inebriarunt eum vino, vt alienatus ab eius mente inuoluntariè nefario incæſtu polluereturr *Geneſ. cap. 29.* Credimus ne quod Puella, quæ Amore deperibat, quæ ardentiſſimè flagrabat ſocietatem Cupidi Amantis, & Amati ſaluam habuerit honeſtatem in longa fuga? quam vtinam in Domo Viri ſeruaſſet!

Et ſanè ſi iuſtum mætum ex iniuſta Cauſa ſibi illatum habuiſſet, non vtique ad augendum ſuſpicionem prauæ, & libidinoſæ conuerſationis in fuga dictum Eccleſiaſticum aſſumpſiſſet Comitem, qui eius Viro ſuſpectus erat, & qui nullo gradu conſanguinitatis, ſeù affinitatis ſibi, vel marito erat coniunctus, vt vterquè fatetur *in noſtro Summario num. 2. litt. G. & num. 5. litt. E.* & ſic, vt autenticaret inhoneſtatem, ſed ſeruato Matronali decore, vel mediante opera Reuerendiſſimi Præſulis aliquod Monaſterium fuiſſet ingreſſa, ſi veritate, non mendacijs vſa fuiſſet, vel habito recurſu ad Præſidem laicum, iſte cunctis exploratis, aut tutum reditum ad Vrbem honeſtis Viris, ac Mulieribus comitantibus præbuiſſet, vel penès honeſtam Matronam cum debitis cautio-

tionibus collocaſſet; aut quoties, de neutro confidiſſet, & ſtatuiſſet ex ſe Romam reuerti ſaltem cum vno ex Attinentibus iter fuiſſet aggreſſa.

Proùt labitur alia excuſatio ad cohoneſtandum illicitum Amorem, quod de prædictis conſcius erat alter Eccleſiaſticus leuir Cognatæ dictæ Franciſcæ, dum ſi benè percurrantur ſupradictæ Epiſtolæ ſummoperè augebitur ſuſpicio illicitæ correſpondentiæ cum illius complicitate, vt in Epiſtola 11. ibi -- *lei mi dice che il &c. non vuol portarci più lettere, vi fò ſapere, che Io li fò due vezzi, e mi abbaſta l'animo, che ve le porti, perche Io gli dico due buone parole, e lui s'incanta, e farà quello, che Io vorrò* -- Et in Epiſtola 19. Amaſij, ibi -- *Perche mi hà detto il &c. Che horæ è più geloſo di prima, e che ſe viene in chiaro di nulla ſi vuol vendicare* -- An autem ex dictis verbis poſſimus deſumere, quod caſti eſſent amores inter ipſos, quia de prædictis erat Conſcius Alter Eccleſiaſticus, quiſque iudicet. Scio tamen, quod ad ſibilum Amaſij in ſocietate d. Alterius Eccleſiaſtici ſe exponere Franciſcam in feneſtra non benè olebat, vt deponit in Proceſſu fugæ Teſtis Fiſcalis 107. *tergo* 108. proindè non ſine Cauſa Dominus Guido ſuſpicabatur etiam de dicto ſecundo Eccleſiaſtico, vt ipſa Franciſca aſſeruit in ſua depoſitione *dicto Summ. noſtro num. 2. antè litt. A.*

His præhabitis, hoc eſt non conſtito, quod Franciſca ſine iuſta, & legitima cauſa fuiſſet perculſa minis mortis, imò conſtito de ſuſpectiſſima correſpondentia cum Amaſio, conſequens erit, quod minæ proferebantur à Viro, vt honor eius ſeruaretur, & ſic erat in poteſtate eiuſdem Franciſcæ ſe eximere à prædictis minis ſine ſcandalo ſine fuga, ſine opprobrio, ſed caſtè viuendo, ſed ipſa nimis procliuis tintillo carnis omnia poſtpoſuerat, vt libidinem expleret, nullo habito reſpectu ad violandum fœdus coniugale, de cuius temeratione nimis incõgruum eſt dubitare, cũ manifeſtè liqueat ex deductis in Proceſſu, & ſignanter ex reciproco Amore inter Amaſios, vt aduertit *Rota dec. 95. n. 6. par. 2. diuerſor.*, & ex litteris tam tenerrimas expreſſiones continentibus, *Ancaran. in cap. Præterea num. 3. & ibi Felin. num. 3. de Teſtibus, Pariſ. conſil. 54. num. 64. lib. 4. Ryminald. Iun. conſil. 274. num. 9. lib. 3. Maſcard. de probat. concluſ. 64. num. 10. in fine.*

Ingreſſus, vel egreſſus d. Eccleſiaſtici è Domo Franciſcæ tem-

pore ſuſpecto, de quo deponit Teſtis Fiſcalis 107. *tergo*, ibi-- *Nel ſuono dell' Aue Maria eſſendo nella medema fineſtra viddi oprire l'vſcio pianpiano di detti Signori Franceſchini, dal quale vſcì detto Signore &c. e ſucchiuſe nel eſcire detto vſcio, mà non lo chiuſe affatto, e di lì a poco detta Signora Franceſca Pompilia con il lume in mano vidi, che chiuſe detto vſcio* -- & comprobatur ab Epiſtola 11. ibi -- *E per queſto Io non vi faccio venire, che hora non s'apre l'vſcio di ſtrada, mà potrete aprire quello della Rimeſſa &c.* de per ſe eſt validus probare Adulterium quoties etiam ageretur ad irrogandam pœnam, *Polidor. Rip. de noctur. tempor. cap. 36. num.* 14., *Farinac. quæſt.* 136. *num.* 122.

Proiectio eiuſdem ad feneſtram ad ſibilum diù, noctuque, & nutus mutui, de quibus deponit *d. Teſtis* 108. ſunt valdè efficaces ad probandam copulam carnalem, *Ancaran. in dicto cap. Præterea num. 3. & ibi Butr. num. 9. ad finem, Felin. poſt num.* 13. *de Teſtibus*.

Modus quoad fugam ſe præpararunt continens, vt ita dicam, ſpeciem Inſidiarum, vt deſumitur ex Epiſtola Eccleſiaſtici 18. ibi -- *Sopra il tutto cerchi di mettere in tutti i Bucali, e lei non ne beua* -- qui quærendo opportunitatem miſcendi ſomnifera perſcrutabatur cuius coloris vinum in Domo biberetur, ne vt authumo, alteratus illius color medicamine admixto inſidias proderet, vt in Epiſtola 4. ibi - *Poi intircaſe ſi ſeguita à bere il vino roſſo vi dico di sì* -- In 12. -- *Mentre lei dice, che non ſi può far dormire mia Madre, mentre ſtà male, e non beue vino* -- Et in Epiſtola 13. -- *In quanto a quello che vuol ſapere del vino vi dico, che è roſſo per hora, mà più in quà non so come ſarà, mà ve lo ſarò ſapere*.

Accedit quod dicta miſerrima afficiebatur Zelothypia dicti Eccleſiaſtici, vt notatur in Epiſtolis 5. & 21. quæ non ſolet concipi, niſi ab Amantibus; Quo circa cum ſit innegabilis amor carnalis inter ipſos reciprocus, non puto poſſe dubitari, quin diſceſſus ſimultaneus à Domo Viri, & aſſociatio per longum tramitem probent Adulterium, *Farinacc. dicta quæſt.* 136. *num.* 182. *& eſt Textus in leg. conſenſu* §. *Vir quoque Cod. de repudijs*, ibi -- *Aut ipſo inuito ſine iuſta; & probabili cauſa foris ſcilicet pernoctantem*.

In progreſſu itineris oſcula ad inuicem impicta, de quibus deponit Teſtis Fiſcalis, quem ea vidiſſe de nocte in Proceſſu non

non reperio, vt exaduerſo ſupponitur, ſed *fol.* 100. aſſerit, ibi -- *Solo viddi, che alle volte ſi baciauano*, & quæ tam anxiè impingere Franciſca deſiderabat, eademquè recipere, vt in Epiſtola 11. ibi -- *La ringratio delli baci, che mi inuiate, ma ſe me li daſſiuo da voi l'hauerei cari, & io ve ne dò altre tanti millioni* -- Et in Epiſtola 10. ibi -- *E dandoui vn'amoroſo bacio* -- Et in 5. -- *Laſciauo di mandarui vn millione di baci* -- & paſſim in alijs, reddunt Adulterium non ambiguum, adeout non deſint aſſerentes, quod probato oſculo, dicatur probatum Adulterium, *Clar.§. Adulterium num.16.Laurent.Tennin. in pract.cauthel.6.num.153.*

Quo circa nemo, ni fallor, tam vecors, & tam inſipidæ mentis inueniri poterit, qui ſciens, quæ recenſuimus non firmiter credat, quod cum reperirentur in Cauponis in itinere, ſiue nocte ad quieſcendum, ſiuè mane ad ſe refocillandos pudor Matronalis non fuerit temeratus.

Sed profectò omues prorsùs tolluntur Ambages, dùm omiſſo, quod ille Eccleſiaſticus veſtibus laycalibus indutus eſſet 4. 100. quod non leue momentum affert ad probationem Adulterij *Matthæu. de re crim.controu.11. num.31.* peruenerunt inſimul ad Cauponam Caſtri noui ſub hora prima noctis cum dimidio, vt tres Teſtes Fiſcales concorditer deponunt 44. *tergo* 47. 49. Et licèt in Manſione duo lecta adeſſent, vnum tamen dumtaxat dictus Eccleſiaſticus voluit aptari, & tota nocte clauſis foribus ſolus cum ſola quieuit (ſi quieſcere poſſunt Amantes,) ex quo abſque dubio probatum remanet Adulterium *cap.litteris de præſumptionibus, Menoch.conſil.31. num.25. verſ.nec vera eſt, Hector. Æmil. de Teſtib. verb.Teſtis Adulterium num.33. Farinacc. dicta quæſt.136. num.170.* & alij paſſim vltra relatos in alia.

Qualis quippè probatio efficacior euadit à Mendacio Franciſce aſſerentis peruenisſe ad dictum Hoſpitium in Aurora, *dicto Summar. num.2.litt.F.& L.* Si enim nil mali fuiſſet per actum, non vtique veritatem occultare tentaſſet, vt benè in propoſito *Riminal.Iun d conſ.274.num.64.ad 67.*

Demùm ſententia, ſeù Decretum Tribunalis, quod datur *in Summario num.* 8. vbi condemnatur dictus Eccleſiaſticus pro cognitione carnali Franciſcæ, remouet omne dubium, quià Adulterium reddit notorium, vt in alia probatum fuit. Et licèt aſſeratur fuiſſe in mente Dominorum Iudicum illud

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moderare, & addere -- *propretensa cognitione carnali* -- non tamen fuit moderatum, & nihilominùs nihil obesset, postquam ad aures infælicis mariti fuerat peruentum Adulterium vxoris manifestum, & notorium canonizatum scilicèt per Iudicis decretum.

Præsertim quia, & si ab eo præscinderemus, adhuc ad effectum, de quo agitur, copula carnalis plusquam sufficienter probata remaneret, quià non agitur de inferenda pœna Adulteræ, sed Adulterium excipiendo deducimus, vt aduertit *Matthæu.* in præcisis terminis *dicta controu.* 11. *num.* 25. & in fortioribus *Spad. cons.* 83. *in princip. lib.* 1. Est enim regulare, quod Adulterium præsumptionibus exhuberanter probetur ad effectum Ciuilem, ad separationem scilicèt Thori, vel ad ammissionem Dotis, *Hostien. in cap. litteris post numerum* 4. *verb. Diuortij*, *& ibi Butrius num.* 6. *de præsumpt. Soccin. Iun. cons.* 32. *num.* 9. *in fine lib.* 2. *Ferrett. cons.* 168. *num.* 4. *Bertazzol. cons. crim.* 20. *num.* 8.

Nec releuat, quod aliquæ ex dictis vehementibus præsumptionibus probentur per Testes singulares, quià agimus de probanda Inhonestate, & Adulterio in genere, nec ad effectum condemnandi Adulteram, sed ad defensam Inquisiti, vt sentit in puncto scribens *apud Sanfælic. decis.* 337. *num.* 16. *&* 19. *& antè eum Clar.* §. *final. qnæst.* 53. *num.* 19. *Farinacc. quæst.* 64. *num.* 223.

Et ratio est euidentissima, quia vt excusetur maritus ab homicidio vxoris adulteræ ex interuallo, non requiritur exacta adulterij probatio, sed superabundat vehemens adulterij suspicio, vt decisum testatur *Sanfelic. dicta decis.* 337. *num.* 13. Nos autem versamur in fortioribus, quia nedum habemus vehementes suspiciones deductas per Testes singulares, sed alias etiam exquisitè probatas, imò apertissimas probationes per Fiscum deductas.

Parum obstante, quod Franciscа prope mortem se exculpans, & Amasium, asseruerit nil mali intercessisse inter ipsos, quia huiusmodi exculpatio nimis affectàta suffragaretur, quoties antecedenter socium inculpasset, & nullo alio indicio eius inculpatio suffulta esset, & hæc iuuaret socium non ipsam. At postquam de matrimoniali fide fracta ex supradictis probationibus conuicta remanet, absurdum esset, quod exculpatio

tio facta, vt honesta mori videretur tantæ esset efficaciæ, vt probationes suæ turpitudinis abolere posset *Marsil. in pract. §. restat num.* 12. *&* 16. *in fine Bursatt. cons.* 201. *num.* 14. *Rimin. iun. cons.* 410, *num.* 17. *Farinacc. quæst.* 46. *num.* 72., & quod horribilius est, vt ex dicta exculpatione occisor grauius puniretur.

Credo, & sperare iuuat eius animam in loco sempiternæ salutis esse positam, mediante Diuino auxilio, dum tempus habuit detestari anteactam vitam, sed nullus cordatus homo laudare poterit eius Testamentariam dispositionem, in qua eius filium vix natum, & ideò innocentem Patri occultatum solum, vt audio in legitima, & extraneum nullo nexu affinitatis, seù consanguinitatis coniunctum in reliqua hæreditate instituit.

Ex his igitur patet adulterium Franciscæ esse pleniſſimè probatum, & proinde iuxtà etiam sensum Fisci eiusdem homicidium, & si ex interuallo patratum non est expiabile pœna vltimi supplicij, nedum ex iusto dolore concepto, sed etiam quia honoris læsio semper viget iuxta illud *Virgilij Æneid. lib. primo*.

Æternum seruans sub pectore vulnus.

In nihilo refragante, quod non occiderit vxorem, & adulterum, quos assequutus fuerat in Caupona Castri noui, immò curauerit eorum carcerationem, quasi quod post recursum ad Iudicem non potuisset de facto suum honorem vlcisci.

Quoniam toto Cælo negamus potuisse aliquem illorum interficere, quia vel citato itinere fessus, vel agitatione mentis ita perturbatus, vt febri corriperetur, & vltra quod præsenserat dictum Ecclesiasticum armis sulphureis esse præmunitum, vt in Processu fugæ ipse asseruit, tempore scilicet non suspecto, quia non adhuc commissa fuerant homicidia 76. 77. Erat int super dictus Ecclesiasticus terribilis, vt ex Teste Fiscali *fol.* 167. & ipsa Franciſca fatetur *Summ. nostro num.* 2. *litt. C.* alias inquisitus pro exoneratione Archibusiatæ in Birruarios, vt ipse asserit 71. Et insuper nimis promptus, & dispositus ad resistendum, vt in Epistol. 18. vbi loquens de somnifero propinando domesticis addit ibi -- *E se per cattiua disgratia la scoprissero, e la minacciassero di morte, apra pure la porta, che ò morirò con voi, ò vi liberarò dalle loro mani* -- Vxor verò in-

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territa, minax, irata, & furibunda, vt effectus demonſtrauit, dum redacto in poſſe Curiæ Eccleſiaſtico coram Birruarijs, & Teſtibus auſa fuit enſe denudato irruere contra virum, quem de facili occidiſſet, niſi fuiſſet impedita *fol.* 50. ipſe verò inualidus, & viribus impar non poterat vtrumque, vel iſtorum alterum occidendo vindictam ſumere enſe viatorio ſolummodò inſtructus, curauit eius carcerationem in illa confuſione animi, vt non potens occidere euitaret continuationem turpitudinis, & hac via impediret futura adulteria, immò, quotiès occidere potuiſſet, & non occidiſſet eſſet laudandus; quia non adhuc per ſententiam Iudicis notorium factum erat adulterium, de quo ſolummodo vrgebant ſuſpiciones.

Quo verò ad recurſum ad Iudicem, quando affirmari poſſet renunciaſſe facultati occidendi vxorem adulteram, quod negamus, ſupplico aduerti, quod prudenter ſe geſſit Tribunal collocando Franciſcam in Monaſterio, vt decentiùs, quam in carcere conuerſaretur, & deinde viſa atteſtatione Medici de eius infirmitate, ne ibi deſtituta neceſsarijs auxilijs moreretur, & ſic ſubiret in procedendo pœnam, à qua vbique locorum receditur, permittere attento conſenſu Domini Abbatis Franceſchini fratris D. Inquiſiti, vt penès Genitores deponeretur cum cautiore de habendo Domum pro Carcere.

Sed laudare non poſsum cuiſquis fuerit, qui curauit euellere Franciſcam à Monaſterio falſo commento infirmitatis, dum decentiùs, & magis legitimè poterat conſequi intentum veritate patefacta, nempe ob prægantiam, & vrgentem vterum, ſed id factum fuiſse non ob aliam cauſam, niſi aut vt Domino Guidoni filius occultaretur, dum lex præſumit filium fuiſse genitum à legitimo Patre, quamuis vxor ſe præbuiſset incontinentem, aut credens Franciſca ex alio concepiſse, quam ex viro pro poſse palliauit eius grauidantiam.

Placeat interim Illuſtriſſimo D.meo paulò vergere oculos Aretium, & parumper conſiderare D. Guidonem infamia notatum, dum ad eius aures peruenit decretum condemnationis adulteri, adultera vſque illuc ſine pœna, neſciens ob infirmitatem ſuppoſitam non potuiſse puniri, & in Puerperio ſibi de induſtria occultato incapacem eſse pœnæ, videns inſuper Fran-

Franciſcam reuerſam in ſuſpectiſſimam domum Petri, & Violantis, qui inſtillarunt inhoneſtatem Franciſcæ, qui eam repudiarunt, & filiam mæretricis eſſe profeſſi ſunt, perdidit omnem patientiam, vt liquet ex diſpoſitione Blaſij *fol.* 318. *tergo* ibi -- *Mà di più l'haueua ripigliata in caſa, dopo che gli ſi era fuggita, benche lui l'haueſſe meſſa nel Monaſtero*, quæ conuerſa in deſperationem coegit infelicem virum ad tandem honeſtum eſſe, nec ideò recurſus ad Iudicem debet illi pœnam augere, vt in puncto *Ruin. conſ.* 2. *num.* 7. *verſ. ſi Maritus occiderit vxorem lib.* 5.

Non negamus D. Abbatem Franceſchinum dediſſe conſenſum reductioni Franciſcæ ad domum Petri, & Violantis, vt Religioni Domini mei Fiſci Aduocati acquieſcam, ſed ad ſummum oretenus, quia in ſcriptis illum videre non potui: Verum in noſtro propoſito non afficit D. Guidonem, cum non liqueat fuiſſe certioratum de tali conſenſu, & quatenus Fiſcus præſumat fuiſſe edoctum ab Abbate Franceſchino eius fratre de dicto conſenſu, coacti erimus affirmare, vel ſcientiam non præſumi, vt infra oſtendetur, vel ad omne peius adeſſe ſcientiam præſumptam, & non puto, quod ex huiuſmodi præſumpta ſcientia poſſit irrogari pœna mortis, & D. Guido condemnari, cum non ſit de dicta ſcientia confeſſus, vel conuictus *cap. nos in quemquam* 2. *quæſt.* 1. ibi -- *Nos in quemquam ſententiam ferre non poſſumus niſi aut conuictum, aut ſponte confeſſum.*

Imò ſi D. Guido falſus eſſet ſciuiſſe conſenſum præſtitum à D. Abbate eius fratre, cum tamen iſtæ non haberet mandatum ſpeciale, nec generale ad lites, ſed tantummodo ad recipiendas pecunias ſibi ablatas à Franciſca, vt videre eſt *fol.* 136. Excedendo limites ſuę facultatis exaſperaſſet ipſius animum necnon Franciſcæ, Petri, & Violantis temeritate ita excanduiſſet infelix Vir, vt raperetur ferè dixerim coactè ad vindictam ſumendam, quam diſtulit quouſque ſpem habuit dirimere matrimonium per errorem perſonæ contractum de Apicibus Iuris Canonici ignarus, quod ſcilicet error qualitatis perſonæ non reddit nullum matrimonium, ſed error individui *Tancred. de matrim. lib.* 7. *diſput.* 18. *num.* 8.

Nec refert, quod Franciſca tempore, quo occiſa fuit, eſſet ſub fideiuſſione de habendo domum pro Carcere, quaſi quod extitiſſet ſub Principis cuſtodia, quoniam quidquid ſit ſi in Prin-

Principis odium inquiſitus Franciſcam occidiſſet, dum tamen ſuum honorem recuperare voluit, & maculam ſuæ æſtimationi inuſtam detergere illius ſanguine, & ſic ex cauſa particulari, prædicta aſserta cuſtodia non attenditur, nec delictum aggrauat vt in fortiori caſu de offendente habentem ſaluum conductum à Principe diſtinguendo firmat *Farinacc. quæſt.29. num.18. & ante eum Maſcard. de probat. concl. 162. num.18. & 19.* vbi quod ſcientia non præſumitur.

Præter quam quod quando loquimur de cuſtodia intelligere debemus de publica, non de domo priuata, vt in alia probaut, nec ſatisfacit reſponſio, qnod procederet in ipſo cuſtodito, non autem de cuſtodiam Violante, quoniam neſcio reperire probabile diſcrimen inter vtrumque, cum vterque agat de effagienda pœna, nec maior ratio conſiderari poteſt in vno, quam in alio, imò maiori excuſatione dignus eſt tertius, qui huiuſmodi cuſtodias frangit, non probata ſcientia, quod offenſus ſub tali cuſtodia exiſteret, quemadmodum excuſauit occidens Bannitus ignorans Rebannitionem *Maſcard. de probat. d concl.162.num.27.Farinacc.quæſt.103.n.123.*

Si vltima pœna non ſit puniendus D.Guido ob Vxoricidium, eadem ratione puniri non poterit ob homicidia Petri, & Violantis, quia eadem cauſa honoris commiſsa fuerunt, tum quia ad illorum inſtigationem Franciſca reperijt Amaſium, tum quia vt magis D.Guido vituperaretur non erubuerunt declarare Franciſcam ex illicito coitu genitam fuiſse in lucem æditam per meretricem, quod multùm deturpat honorem totius Domus, vt obſeruat *Gratian. diſcept. 863. num. 4. 5. & 6.* cuius filiæ ſolent matrem imitari, tum etiam quia, vt ſupra dixi, Inquiſitus exarſit, habita notitia de regreſsu Franciſcæ ad eorum domum 318. *tergo, & ſequen.* & comprobat Alexander in ſua confeſſione 646. ibi -- *che ſi doueua ammazzare la Moglie, Socera, e Socero, perche detti Socero, e Socera teneuano mano al mal fare alla figlia, egli faceuano i Ruffiani* -- Quod magis claruit in fataii ſero, quo occubuerunt, nam pulſata Ianua, & ſtatim ac Violantes audiuit chariſſimum nomen Amaſij, illicò illam aperuit, & patefecit, quod ni fallor remouet dubium, quod Petrus, & Violantes non egreferrent amores filiæ, & Amaſij.

Hoc vnum eſt, quod aut compellimur fateri dictos Coniuges de Comparinis dediſse nouam cauſam læſiuam honoris recipien-

piendo eam domi poſtquam declarauerant non eſse eorum filiam, & de adulterio illius manifeſtè conſtabat, & proinde recedendum eſse à pœna ordinaria, vt benè *Bertazzol. conſ. 434. num. 15. verſ. verum ſumus*. Quamuis iuſtus dolor conceptus ſemper cor præmat, & ad vindictam ſtimulet, vt præter in alia relatos *Ioſeph Mele in addit. ad Guizzareli. dec. 18. num. 5.*

Aut adhuc duraſse, imò auctam fuiſse cauſam iuſti doloris, quæ ſatis eſt ad aſserendum homicidia dici incontinenti patrata, *vt egregiè in terminis Ruin. d. conſ. 2. num. 7. poſt med. verſ. durante igitur tom. 5. Honded. conſ. 104. num. 30. vol. 1. Bertazzol. d. conſ. 434. num. 15. verſ. Præterea, Ioſeph Mele in addit. ad Gizzarell. d. dec. 18. nu. 5. & ſeq. de Ponte de poteſt. Proreg. tit. 2. § 3. num. 32.*

Cumque tum ex confeſſione Guidonis, tum ex confeſſione ſociorum, tum denique ex tot probationibus in Proceſsu redactis conſtet D. Guidonem motum fuiſse ad illos occidendos ex cauſa honoris, fruſtrà Fiſcus prætendit ex alia cauſa extranea delicta commiſiſse, nam vt verum fatear nullam aliam cauſam reperio, quæ honorem non tangat, & vulneret; ſi contemplemur, quas D. Guido recenſet in Proceſsu *fol. 96. 97.* Quod ſcilicet prædicti Coniuges de Comparinis curaſſent fugam Franciſcæ, quodque inſidiati fuiſsent eius vitæ, quod vnum ſufficeret ad euadendam pœnam ordinariam *Bertazzol. conſ. 433. & 434. Grammat. dec. 5. per tot.* vbi teſtantur fuiſse mitiùs punitum, qui occidi mandauit minantem licet non plenè conſtaret de minis, vt patet *nu. 16. verſ. & ſi dicatur* ſequitur *Teb. Non. conſ. 109. nu. 6.* & ſunt *Textus clari in l. prima C. quando liceat vnicuique* ibi -- *Et mortem, quam minabatur excipiat, & id quod intendebat incurrat, & in l. ſicut allegas C. ad leg. Cornel. de Sycar.* ibi -- *Dubium non eſt eum, qui inferendæ necis voluntate præceſſerat iure cæſum videri*.

Altera cauſa deducta per Fiſcum conſiſtit in lite mota ſuper annullatione promiſſionis Dotis; Super qua exaduerſo adhibita fuit omnis ſolertiſſima indago, & propterquam prætenditur in pœnas *Conſtitutionis Alexandrinæ*, & Bannimentorum incidiſſe, ſed profectò labitur prętenſio, nàm ſi bene introſpiciamus, ſinè difficultate reperiemus huiuſmodi Cauſam

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non eſſe minùs offenſiuam Honoris, nam cauſa ob quam Petrus ſe eximere tentauerat ab obligatione præſtandi Dotem promiſſam illa vnica fuit, quod ſcilicèt Franciſca non eſſet eius filia, ſed incerti Patris, & Męretricis, an autem huiuſmodi declaratio vulneret æxiſtimationem Nobilis Viri, omnis Homo agnoſcet.

Vtrumque ſit huiuſmodi prętenſio locum ſibi forsàn vindicare poterat antequam vt ſupra dixi haberentur confeſſiones Domini Guidonis, & Sociorum, tunc enim Fiſcus poterat eſſe ambiguus ex qua Cauſa ſemouere potuerit ad occidendum; At poſtquat liquet ex omnium confeſſionibus cauſam Honoris dediſſe impulſum, & compuliſſe ad occidendum, vt Dominus Guido aſſerit *fol.678. ter.* ibi -- *E dare alli medeſimi delle ferite in riguardo, che li medeſimi mi haueuano tolto l'Honore, che è il principale* -- Fruſtrà quęritur an ob aliam Cauſam illos occiderit, quo circa cum de cauſa Honoris liqueat Fiſcus nunquam poterit probare illos fuiſſe occiſos ex cauſa litis, & non Honoris, vt perneceſſe requiritur ad incurſum Bullæ prędictæ, vt in puncto *Mandoſ. conſ.61. n.1. ad 3. Rota coram Puteo deciſ.97. & 98. lib.1.*

Quæ etiam aptantur reſpectu Homicidij Franciſcæ, quę intentauit Iudicium Diuortij, nam ſi ob aliam Cauſam prætendiſſet ſeparari, nec liqueret de ſua Inhoneſtate, tunc vtique factus eſſet locus Alexandrinæ; At cum læſus Honor cauſam dederit Homicidio longe verſamur extra terminos Alexandrinæ, alias adinuentus eſſet pulcherrimus modus, vt impunè Vxores proſtitueretur, nam ſi poſt Adulteria admiſſa inſtituerent Iudicium ſuper ſeparatione Thori reperirent tutum confugium ad euitandas Mariti iuſtè iratas manus, & tute redderentur Clypeo dictæ Bullæ, quamuis non obtentatum diuortium, ſed ob earum Inhoneſtatem offenderentur.

Qualis pęna vltimi Supplicij eo minus ingeri poterit contra D. Guidonem ſub prętextu, quod contra formam Apoſtolicarum Conſtitutionum, & Bannimenrorum Homines Armatos congeſſerit, nam quando etiam controuerteretur; An liceat Viro congregare Homines ad occidendum Vxorem Adulteram, adhuc eſſemus extrà terminos Conſtitutionum, quę locum habent, quando Homines congregantur ad indeterminatum malum, & malum ſequutum non eſt, tunc enim aptantur

tur diſpoſitiones Bullares, at quoties vniuntur Homines ad patranda delicta, tunc eis ſequutis attenditur finis, ad quem Homines congregati fuerant, & illius pœna indicitur, nec amplius quęritur de principio, hoc eſt de conuenticula, vt in alia probaui, & addo aliud Votum *Orani penès Deciſ. poſt. 2. vol. conſil. Farinacc. vot.61. num.20.* & ibi *Adden. litt.A. in fine*, vbi poſt diſputatam quæſtionem aſſerit ibi -- *Sed certè præmiſſis non obſtantibus inoccurrenti caſu non credo recedendum à reſolutione tantorum virorum, quos credendum eſt omnia cum maturitate, & prudentia conſideraſſe, & reſcripſiſſe S.D.N. Clementi VIII.* -- Et in fine additionis teſtatur ità fuiſſe iudicatum in Camera Apoſtolica de ordine dicti Summi Pontificis, *Bartol. in l. nunquam plura num.10. ff. dè Priuat. delict.*

Quod etiam remanet comprobatum à Bannimentis Illuſtriſſimi Domini mei *cap.82.* vbi imponunt pęnam prò coadunatione Hominum ad malum finem, ſi ille prauus finis ſequutus non ſit, & nihil determinant vbi delictum, prò quo Homines erant coaceruati ſit conſumatum, quia hoc caſu pœnæ conuenticulæ ceſſant, ſed ingeritur ſolummodo pęna patrati delicti, vt ſupra dictum eſt.

Et quod congregatio Hominum ad effectum recuperandi dignitatem non cadat ſub pœnis Conſtitutionum Apoſtolicarum penès *Farinacc. conſ.65. num.66.*

Remanet tandem Armorum probitorum delatio, quam & ſi nonnulli Doctores aſſeruerint non eſſe confundendam cum delicto principali, contraria tamen Sententia crebriori Doctorum calculo recepta eſt, quia attenditur finis, quem principaliter Delinquens in mente habuit, vt in noſtris pręciſis terminis *Bartol. in l. numquam plura num.7. & ibi Adden. litt.C. ff. de priuat. delict., & ibi Angel. num.8. cum adden. litt.B. poſt medium, Bald. in l. Aduerſus num.7. C. de furtis, Andr. Barbat. de Cardinal legat.5. quæſt. num.26., Marſil. in l. ſi in Rixa num.5. ff. ad leg. Cornel. de Sycar., & in l. vnica num.54. Cod. de rapt. Virgin., & in Prax. crim. §. Pro complemento num.38.* & poſt quamplurimos *Iodoc. in Pract. crim. cap.77. num.4. Andr. de Iſern. in Conſtit. ſi quis aliquem de Percuſſ. illicit. cum Armis in fin. principy verſ. ſed prima opinio videtur verior, Viu. comm. opin. verb. Statutum puniens,*

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*Bertazzol. conſ. criminal.*520. *num.*1. *Cephal. conſ.*204. *n.*42. *& ſeq. lib.*2. *Farinacc. quæſt.*22. *num.*20. Et in puncto, quod occidens ex cauſa Honoris cum Armis prohibitis mitius adhuc puniatur iudicatum teſtatur *Matthæu. de Re crim. dicta controu.*11. *num.*46. *&* 47.

Quod etiam procedit in fortiori caſu plurium Delictorum, quæ poſſunt patrari commodè ſeparatim, & tendunt ad finem diuerſum, nihilominùs ſi eodem tempore, & ad eumdem finem committantur, vna tantum pœna principalis delicti in mente habiti imponitur, vt volens committere furtum ſi tranſcendat muros Ciuitatis, quamuis illud potuiſſet committere abſque delicto tranſcenſionis, quod eſt grauiſſimum *Farinacc. quæſt.*20. *num.*146. adhuc vnica tantum pœna ſcilicèt furti punitur veluti principaliter habiti in mente paulò acerbiori pro tranſgreſſione murorum Ciuitatis, non tamen grauiſſima *Ioſeph. Ludouic. deciſ. Lucenſ.*61. *num.*3. *verſ. ſi verò forent par.*1. *Farinac. quæſt.*22. *num.*25.

Non me latet, quod Bannimenta Illuſtriſſimi Domini mei *cap.*8. videantur dirimere quæſtionem diſponendo, quod pœna delationis Armorum confundi non debeat cum pœna delicti cum eis commiſſi, ſed vltra, quod Bannimenta non comprehendunt aliquem ex Socijs vti forenſes, & non de diſtricto, cum tamen paſſiuam interpretationem recipiant à Iure communi, quoties Arma deferantur non ad malum finem, & deindè aliquod delictum committatur cum eis, quia Delinquens non habuit in mente delictum, quod patrauit, tunc de vtroque punitur, quia diuerſo tempore diuerſa crimina commiſit, at quando quis animo occidendi arma prohibita deferat, & exinde occidat, tunc attenditur principale delictum Homicidij, cuius contemplatione Arma geſtauit, & Homicidij pœna imponitur, non autèm delationis Armorum, vt in puncto ſic diſtinguendo comprobat *Io: de Plat. in* §. *Item lex Iulia il* 2. *in fine verſ. ſed quero An ſi aliquis Inſtit. de public. Iudic.*

Supplico aduerti, quod Facinus, de quo agitur, redditur conſiderabile, quia tres nil mali timentes, ſed vndequaque timere debentes ceciderunt, non ob genus Armorum, quibus cæſi ſunt, & ſic eorum numerus non Inſtrumentum mortis excitauit admirationem, & idem pro certo fuiſſet ſi longiſ-

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ſimis enſibus, vel Baculis, vel Saxis occubuiſſent, quo circa duriſſimum eſſet, quod Fiſcus excandeſcat Homicidijs, & pro illis non potens exigere pœnam mortis, exigat eam pro delatione Armorum.

Præterea D. Guido negat expreſsè adhibuiſſe, detuliſſe, aut retinuiſſe arma reprobatæ menſuræ, & licèt à quatuor eius Socijs aſſeratur tempore Homicidiorum habuiſſe præmanibus breuem cultrum, & ſimile armorum Genus dediſſe Socijs, non tamen iſti poſſunt illum conuincere ad pœnam ordinariam, vt benè diſputata materia, & confutatis contrarijs firmant *Farin. quæſt. 43. num. 76. iuncto num. 69. & ſeq. Guazzin. defenſ. 32. cap. 8. num. 5. verſic. Quæ opiniones per tot. Angel. de confeſſ. lib. 3. quæſt. 19. num. 14.*

Non negat penes ſe habuiſſe Terzarolum vndique honuſtum, ſed illum in occidendo non adhibuit nec ad occidendum geſtabat, ſed ſolummodò ad ſe defendendum, quoties in domo prædicta inueniſſet extraneos paratos ad vim inferendã, idquè ſibi permiſſum fuit ſtante ampla facultate deferendi huiuſmodi genus Armorum per Sratum Eccleſiaſticum, & addere audacter poſſem etiam in Vrbe, quia de Vrbe ibi nulla fit mentio, quamuis excipiantur nonnulla loca ex veriſſimo axiomate, quod exceptio firmat regulam in non exceptis, *Alex. conſ. 64. num. 2. lib. 4. Surd. conſ. 430. nu. 7. lib. 3. Gratian. diſcept. forenſ. cap. 922. num. 31.*

Idque faciliùs ſibi licere, credere poterat, quia in Vrbe extabant eius Inimici, & hic minabantur, ac inſidias ſtruebant, vt ipſe D. Guido dicit, & ideò magis erat neceſſaria hìc delatio ſimilium armorum, quàm alibi.

Nec releuat, quod ex quo appenſatè prætenditur occidiſse ei ſuffragari non deberet licentia deferendi Arma, nam vltra quod ex ſupra deductis, & in alia homicidia prædicta ſtante cauſa honoris nequeunt dici ex interuallo patrata; Obiectũ procederet quoties vſus fuiſſet dictis Armis ad occidendum, ſed ijs non adhibitis non videtur poſse dici non ſuffragari facultatem. In omnem caſum quamuis de ſummo rigore loquendo poſſet dici armatus dd. armis occidiſse, non tamen pœna rigoroſa mortis eſset puniendus *Caball. reſol. crimin. caſ. 90. num. 7.* ibi -- *Nunquam tamen vidi de facto in his caſibus d. condemnationem vitæ exequi, ſed ex gratia in mitiorem commutari.*

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Demùm nec ex quo aſſitit homicidijs commiſſis per Socios cum Armis prohibitis poteſt dici incidiſſe in pœnam prohibitionis, quia huiuſmodi pœna, quæ locum habet in adhibente dd. Arma, non ſe extendit ad Socios, & aſſiſtentes, vt in puncto *Merlin. Pignattell. contr. forenſ. cap. 47. n. 21. cent. 1.*

Non loquor de Dominico, & Franciſco, quia iſti duo vltimi veluti forenſes non ligantur noſtris Bannimentis, prò omnibus tamen militant omnia, & ſingula fundamenta pro minoratione pœnæ, quæ militant pro Domino Guidone, cum acceſſoria non iudicentur ad imparia cum principali, vt in alia oſtendi, non afferendo ſimpliciter Authoritatem vnius, vel alterius Doctoris, ſed Deciſiones Supremorum Magiſtratuum, & hanc Sententiam ſeruari in Practica teſtatur *Clar. §. Homicidium ſub num. 51.*

Cęterum enixe ſupplico, vt Illuſtriſſimo Domino meo benigna fronte, ac ſerenis oculis perpendere placeat, quod Dominus Guido occidit, vt eius Honor tumulatus in infamia reſurgeret. Occidit Vxorem, quia illi fuit opprobrio, & illius Genitores, qui poſtpoſita omni verecundia filiam repudiarunt, & declarare non erubuerunt eſſe Meretricis genitam, vt ipſe dehoneſtaretur, cuius mentem peruerterunt, & ad illicitos Amores non pellexerunt dumtaxat, ſed vi obedientiæ filialis cogerunt. Occidit ne ſcilicèt amplius in dedecore viueret Conſanguineis inuiſus, à Nobilibus notatus, relictus ab Amicis, ab omnibus deriſus. Occidit in Vrbe nempe, quæ aliàs fuit ſpectata Nobilem Matronam abluere maculas Pudicitiæ proprio ſanguine, quas ipſa inuita, & reluctante filius Regis impegit, morte propria alterius culpam, & violentiam expiando *Valer. Māxim. lib. 6. cap. 1. num. 1. Tit. Liu. lib. 1. Hiſtor.* Et quæ vidit Patrem vndequaque impunem, & non illaudatum ſe polluentem Parricidio filiæ, ne raperetur ad ſtupra *Valer. Maxim. vbi ſupra num. 2. Tit. Liu. ib. 3. Hiſtor.* tanti illi cordi fuit ammittendi Honoris ſuſpicio, vt potiùs voluerit orbari filia, quam illa incederet inhoneſta, licèt non ſpontè. Occidit in propria Domo, vt Adultera, eiuſque Parentes conſcij agnoſcerent nullum locum, nullumque aſylum eſſe tutum, & impenetrabilem Honori læſo, neue ibi continuarentur opprobria, & Domus quæ turpium Teſtis fuit, eſſet & pœnæ. Occidit, quia

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alio modo non poterat eius æxiſtimatio læſa tàm enormiter ducere cicatrices. Occidit vt exemplum præberet Vxoribus Sacra Iura Coniugij religiosè eſſe ſeruanda. Occidit denique, vt pro poſſe honeſtus viueret, ſin minus proprij Honoris offenſi commiſeranda victima caderet.

Quarè &c.

H. de Archangelis Pauperum Procurator.

Illuſtriſs. & Reuerendiſs. D.

Vrbis
GVBERNATORE

In Criminalibus.

Romana Homicidiorum.

P R O

Domino Guidone Franciſchino, & Socijs Carceratis.

C O N T R A

Fiſcum.

Noua Facti, & Iuris Domini Procuratoris Pauperum, cum Summario.

ROMÆ, Typis R. Cam. Apoſt. 1698.

Ill.me, & Reu.me Dñe. CConfeſſiones D. Guidonis Franciſchini, Dominici Gambaſſini, Franciſci Paſquini, & Alexandri Baldeſchi eius ſociorum ſunt nullæ, propterea non attendendæ, cùm ſcilicèt emanauerint metu rigoroſi Tormenti Vigiliæ eiſdem iniuſtè decreti. *Bertazzol. conſ. crim. 341. nu. 32. Giurb. conſ. 8. nn. 19. Hect. falic. aliegat. 106. num. 1. Mattheu de re Crimin. controu. 27. nu. 26.* & id quamuis ipſi in eiſdem Confeſſionibus fortaſsè adhùc perſeuerent *Paul. de Caſtr. conſil. 273. nu. 1. vol. 1.*

Vt enim dicebamus in præterita ex gratia reaſſumenda, *Conſtitutio ſa. me. Pauli V.* edita ſuper Reformatione Tribunalium Vrbis, quæ eſt in ordine *la 71. tit. de Iudic. Criminal. qui eſt* §. 10. *num. 30. to. 3. Bullarij noui pag.* 198. mandat hoc Tormentum non inferri niſi duobus copulatiuè concurrentibus, altero, quod Reus ſit grauatus Indicijs vrgentiſſimis, altero, quod delictum ſit atrociſſimum, & de praxi teſtantur *Doctores allegati in dicta mea Informatione* §. *Quatenùs verò Fiſcus*.

Neque verò ſuffragari poſſunt aſſertæ facultates huius Tribunalis, quià qualeſcumque illæ ſint, non habent locum, niſi in delictis pœnâ mortis puniendis *D. Raynald. obſeru par. 1. cap. 5.* §. 1. *ad tertium num.* 121. *& ſeq* vbi rationem reddit, quià quando Reus non eſt damnandus ad mortem, pro habenda ab eo Confeſſione, non eſt exponendus Tormento, quod poteſt illam cauſare, proùt ferè cauſauit Alexandro, qui per duas vices in eodem Tormento lethaliter defecit.

Delictum autem, quod fuit imputatum Domino Guidoni, & ſocijs, & quod ipſi confeſſi ſunt non eſſe primi, nec ſecundi generis latè fuit probatum in præterita; Et quidem cùm Dominus Guido fuerit motus ad occidendum, ſiuè occidi faciendum Franciſcam Pompiliam Vxorem, Petrum, & Violantem Socros ex cauſa honoris, ſcilicet ob Adulterium, quod dicta Franciſca Pompilia commiſit conſpirantibus, & adiuuantibus alijs, iſta releuat à pœna mortis non ſolùm ipſum iuxtà *Textus, & Doctores allegatos in dicta Informatione* §. *Hoc ſtante cùm ſeq. iunctis* §. *prædictis nullatenus, & §. ſeq.*

A Verùm

Verùm & Socios *ex Doctoribus paritèr allegatis in dicta Informatione §. quæ dicta ſunt cum tribus ſeqq.* quibus addi poſſunt *Bald. in l. prima in ſecunda lectura num. 36. in fine, Cod. vnde vi; & in cap. de cætero, num. 4. verſ. ſed pone de ſent. & re Iudic. Ioann. de Anan. in cap. final. nu. 2. verſ. vltimò pro ampliori, de Raptor. Incendiar. &c. Roman. in l. prima, §. Vſafructuarius, num. 17. ff. de oper. nou. nunciat. Marſil. in lege vnica nu. 13. & duobus ſeqq. C. de Rapt. Virgin. Gabriel. conſil. 170. nu. 3.* ibi: *Et multò minus debent morte hi affici, quia cùm inſpecta opinione hominum communi fabritium excuſet à grauiori pœna iuſtus Dolor. l. graccus, Cod. de Adulter. etiam hi, qui ab ipſo vocati, & adducti ſunt, debent ſimiliter excuſari: & nu. 13. lib. 1. Mazzol. conſil. 57. num. 18. Facchin. conſ. 36. num. 22. lib. 2. Alex. Rauden. var. cap. 7. num. 5. Grammatic. ſuper Conſtit. Regni ſi Maritus, quæ eſt lib. 3. rubr. de pœn. Vxor. in Adulter. deprehenſ. num. 12. pag. 109. Mattheu de re Crimin. contr. 11. nu. 42. cum ſeq. Viu. deciſ. 197. nu. 26.*

Abſque eo, quod in præſenti ampliùs opponi poſſit, quod de Cauſa honoris non conſtet, quià decretum Condemnatorium Canonici Caponſacchi pro dicto Adulterio emanatum in hoc Tribunali die 24. Septembris proximè præteriti, & quod datur per extenſum in Summario *num. 8.* rem facit claram, & manifeſtam *cap. Veſtra, §. quibuſcumque, verſ. cæterùm aliud eſt, & cap. quæſitum de Cohabit. Cleric. & Mulier.* dicitur enim ibi: *Ioſeph Maria Caponſacchio de Aretio pro Complicitate in fuga, & deuiatione Franciſcæ Comparinæ, & cognitione Carnali eiuſdem, Relegatus per Triennium in Ciuitate Vetula*: Nec iſta verba dici poſſunt Titulus Cauſæ, qui non facit quemquam Reum, vt ſupponit Dominus meus Fiſci Aduocatus, ſed ipſummet Decretum, ſiquidem Titulus Cauſæ à me viſus in Proceſſu originali fuit is, qui ſequitur: *Aretij in Etruria fugæ à viro.*

In tantum verò dictus Canonicus fuit condemnatus dumtaxat in dictam pœnam, quia ipſe erat forenſis, & deliquerat extrà ſtatum, quo caſu debuiſſet ſolum dimitti cum exilio, *Farin. quæſt. 7. nu. 7. verſ. ſed quid erit faciendum in fine.*

Nec verum eſt, quod fuerit receſſum à dicto decreto, minuſq; de mandata illius moderatio, nil enim aliud habemus, quàm quod, vt aliqualiter indulgeretur aſſertæ adhùc honeſtati Mulieris, & decori dicti Canonici, pro quibus acriter, & inceſſan-

ceſſanter vrgebat D. Prcourator Charitatis eorum defenſor, in mandato de excarcerando loco verborum dicti Decreti, fuerunt adhibita alia -- *Pro cauſa de qua in actis* -- quæ vtiq; non important præcedentiũ Correctionem, ſed imò virtualem omnium Actorum, & conſequenter etiam eiuſdem Decreti Inſertionem vulgata *l. aſſe toto ff. de hæred. Inſtit.*, *cùm alijs per Pariſ. conſ.* 108. *n.* 47. *lib.* 1. *Rot. coram Priolo deciſ.* 423. *n.* 4.

Eoq; magis cùm dictum Decretum immutari nec potuiſſet vtraque Parte non audita, vt ipſemet memini fuiſſe reſponſum eidẽ D. Procuratori Inſtanti pro dicta moderatione *per Gloſſ. in l. diuerſa, Cod. de Tranſact. Bartol. in l. acta verſ. Tertiam opinionem, Cod. de Re Iudicat.*

Sed ad quid modò inſiſtere in præmiſſis, dùm ex tot tantiſque in præſenti deductis, & optimè more ſolito ponderatis per D. meum Procuratorem Pauperũ (quæ quidem hìc non repeto pro euitanda Inutili ſuperfluitate) concludenter adeò conſtat de dicto Adulterio, & Vlteriori etiam Inhoneſtate dictæ Mulieris, vt nullus remaneat dubitandi locus de Cauſa honoris, quæ verè impulit D. Guidonem ad delinqueudum; ſufficeret enim, quod huiuſmodi Cauſa verificaretur etiam poſtquàm ipſe Delictum commiſit, vt in puncto conſuluit *Bertazzol. conſ. Crimin.* 42. *lib.* 1. *Matteu. de re crim. contr.* 12. *num.* 15. *& ſeqq. Dond. conſult.* 97. *num.* 16 *in fine Muta dec. Sicil.* 61. *num.* 12. *Dexart. dec. Sardin* 5. *num.* 15.

Vlteriùs non eſt opus modo inſiſtere in præmiſſis, quia D. Guido Cauſam honoris, & quidem reſpicientem non ſolùm vxorem, ſed ipſoſmet Socros expreſſit in ſua Confeſſione præſertim fol. 98. ibi -- *Di poi è ſucceſſa la fuga così obbrobrioſa non ſolo alla Caſa mia, che è Nobile, mà anc. à quella di qualſiuoglia anche Perſona Vile, la qual fuga fece di notte tempo col Canonico Caponſacchi, e Compagni, la quale in progreſſo, che fù accompagnata nella fuga dal Vttorino in caliſſe fù veduta dal medemo Vitturino dare bagi, & abbracciamenti al ſudetto Cunonico, di poi hò hauuta noua, che dormirno aſſieme in Foligno nell'oſteria della poſta, dipoi in Caſtelnouo, à ſegno tale, che reſta conuinta per Adultera non ſolo per queſto eccеſſo, mà con altri ſimili, che hò ſentito di poi habbia fatto in Arezzo con altre Perſone* -- fol. 672. à tergo, ibi -- *E richieſtolo detto Santi, ſe haueſſe volſuto accudire di fare vn affronto alli Comparini à cauſa dell'honor mio, e dell'Inſidie, che face-*

uano sopra alla mia vita, gli rispose il detto Alessandro, che l'
hauerebbe fatto, e se fusse bisognato qualched'vn altro, l'haue-
rebbe trouato, onde dopo alquanti giorni mi capitò in Casa Bia-
gio altre volte nominato in Compagnia del citato Santi, e mi dis-
se, che anche lui hauerebbe accudito, trattandosi specialmente
di materia d'honore, e di machina di vita.-- & fol. 678. ibi --
e mentre ci trattenevamo nella vigna sudetta, cioè nella Casa
di essa, si discorse di diuerse cose, e precisamente di quello, che
si doueua fare. cioè dell'affronto dà farsi alli Comparini, cioè
Pietro, Violante, e Francesca mia moglie, e di dare alli medemi
delle ferite in riguardo, che li medemi mi haueuano tolto l'ho-
nore, che è il principale, & ancora m'insidiauano alla vita --,
& fol. 683. à tergo in fine ibi -- *& haverei da dir tanto, che si*
potrebbe scriuere fino à domattina, quando volessi raccontare
tutti gli aggrauij, e spese, che hò riceuute da i Comparini sudet-
ti, mà tutto questo non importaua niente, se non mi hauessero
toccato nell'honore, & Insidiato alla vita -- & fol. 684. ibi --
Come, che Santi di sopra nominato era mio Lauoratore nella
mia Villa di Vittiano, & inconseguenza Informato di tutti gli
aggrauij, che haueuo riceuuti dà detti Comparini, & ancora ha-
ueua Informatione dell'Indecentissima fuga presasi dà mia mo-
glie nella forma altre volte detta, si essibì dà se di trouarmi, con-
forme mi trouò il nominato Alessandro ad effetto, che mi potesse
accudire in euento, che io hauessi volsuto vendicare il mio ho-
nore, e l'Insidie, che si faceuano alla mia vita -- & fol. 699.
ibi -- *e fù da mè arriuata in Castelnouo con il Canonico Capon-*
sacchi, doue furono arrestati dà sbirri, e poscia condotti in que-
ste Carceri, essagerai più volte nel Tribunale l'eccesso del Par-
to supposto, acciò si venisse à punire costoro, mà io non hauendo
mai veduto, che sia preso espediente sopra vn affare di tanta
importanza all'honor mio, son stato quasi necessitato à prender-
ne qualche resolutione per ricuperare quell'honore, che con tan-
ta Infamia li Comparini medemi haueuano riuerberata in me
La loro Ignominia -- & fol. 720. ibi -- *e quello, che dissi ad Ale-*
ssandro, Biagio, e Domenico, Io dissi ancora à Francesco in occa-
sione, che il medemo sapendo gli aggrauij, che io haueuo riceuuti
nell'honore, mi si essibì di fare vn smacco alla nominata mia
moglie, & io all'ora gli risposi, che non meritaua lo smacco, mà
bensì la morte.

Huiuſ-

Huiuſmodi enim Confeſſio acceptari debet cùm ſua qualitate, quam non poteſt Fiſcus ſcindere, & ab illa ſeparare ex vulgata Theorica *Bart. in l. Aurelius, § item quæsijt, ff. de libert. leg. Farin. conſ. 67. num. 8. & conſ. 187. num. 5. & quæſt. 81. num. 157. Vermigl. conſ. 282. n. 8. Guazin. def 30. cap. 7. n. 5. & defenſ. 32. cap. 35. num. 1. verſ. ſed contrarium, & num. 2. Mattheu de Re Crimin. contr. 18. num. 60. Triuiſan. deciſ. 46. num 32. lib. 2.* vbi quod diſtinctiones, quæ ſolent ab aliquibus afferri, procedunt in Ciuilibus, non autèm in Criminalibus, *Sperel. deciſ. 64. num. 16. & deciſ. 108. num. 36. & deciſ. 136. num. 27. Rot. coràm Merlin. deciſ. 103. num. 2. & in recen. deciſ. 308. num. 9. par. 13. & deciſ. 57. num. vlt. par. 17.*

Indubitanter quandò, prout in præſenti, agitur ad effectum puniendi pœna ordinaria, quidquid ſecùs dici poſſet ſecundùm aliquos ad effectum infligendi extraordinariam, *Abb. in cap. auditis, num. 32. verſ. putat tamen, de præſcript. Vermigl. conſ. 325. num. 6. Bertazzol. conſ. crim. 27. n. 2. lib. 1. & conſ. 449. num. 30. & 31. & conſ. 450. per tot. lib. 2. Farin. quæſt. 81. per totam, & præcipuè num 112. & 157. Gomeſ. var. reſol. tit. de homicid. cap. 3. num. 26. Foller. verb. & ſi confitebuntur, n. 46. Ludou. deciſ. Lucenſ. 19. per totam, & præcipuè num. 12.* vbi Concluſionem extendit ad omnes qualificatas Confeſſiones in quouis genere Delictorum.

Præſertìm quando, qualitas aliundè non ſolùm adminiculatur, ſed concludenter iuſtificatur; *Vermigl. conſ. 282. num. 12. conſ. 431. num. 7. Ciriac. contr. 637. num. 7. Farinacc. quæſt. 103. num. 157. Angel. de Confeſſ. lib. 3. quæſt. 11. num. 24.* Vltrà enìm dictum Decretum, & alia ſuperiùs animaduerſa habemus ſocios Criminis expreſsè deponentes ſe fuiſſe requiſitos a D. Guidone ad vna cùm ipſo delinquendum ex prædicta Cauſa ſignanter *Blaſium Agoſtinelli fol. 316.* ibi -- *quale Sig. Guido mi raccontò, che gli ſi era fuggita la moglie con vn' Abbate, e che gli haueua portate via denari, e gioie, menandomi nella ſtanza, doue gli haueua leuate dette gioie, e denari, e mi diſſe, che lui voleua venire à Roma ad ammazzare la ſua moglie, e voleua, che io, e detto Aleſſandro foſſimo venuti con lui, &c. & fol. 317.* ibi -- *& in tale occaſione detto Sig. Guido mi diſſe, che la ſudetta ſua moglie per fuggire ſicuramente con detto Abbate, & acciò, che lui non ſe ne fuſſe accorto, haueua meſſo l'oppio nel vino per la Cena per far' addormen-*

mentare lui con tutti, e che litigaua con il ſuo Socero, quale non ſolo haueua giurato, che detta ſua moglie non foſſe di lui figlia, mà di più l'haueua ripigliata in Caſa, dopo, che gli ſi era fuggita, benche lui l'haueſſe meſſa nel Monaſtero, dopo, che l'arriuò in Caſtel nouo nella fuga, - & Alexandrum Baldeſchi fol. 623. ibi -- detto Sig Guido alla preſenza mia, come di Biagio, di Franceſco, e di Domenico, &c, diſſe, che ſi doueua ammazzare la ſua Donna, cioè la ſua Moglie, che ſtaua quì in Roma à cauſa di ricomprare l'onore, & anche il Padre, e la Madre di detta ſua moglie, perche teneſſero mano à detta ſua moglie al torto, che gli faceua nell'honore, † & fol. 645. ter. ibi -- ci diſſe anche alla preſenza del Vignarolo, che ſi doueua ammazzare la Moglie, il Suocero, e la Suocera, perche detti Suocero, e Suocera teneuano mano al mal fare alla figlia, e gli faceuano li Ruffiani, e perche anco diceua detto Guido, che detti genti, che ſi doueuano ammazzare, voleuano fare ammazzare lui, cioè eſſo Guido.

Cauſam autẽ honoris excludere nõ valent atteſtationes eorum, qui aſſiſtentiã præbuerunt Franciſcæ Pompiliæ vſq; ad obitum ſuper declararione ab eadem facta de numquàm violata fide coniugali; quià ſunt ſimplices fides extraiudiciales, quæ non faciunt fidem, *Cyriac. contr. 61. num. 6. & contr. 284. nu. 66. Rot. rec. deciſ 290. num. 2. in fin. par. 3.*

Præſertim cùm fuerint extortæ, & emendicatæ pendente lite, & parte non citata per Hæredem eiuſdem Franciſcæ Pompiliæ ad euitandas vexationes Monaſterij Conuertitarum prætendentis ſucceſſionem ex cauſa inhoneſtatis, quodque propterea ſequeſtrari, & iudicialitèr deſcribi fecit omnia bona hæreditaria eiuſdem, *Roland. conſ. 40. num. 5. lib. 1. Ciriac. d. contr. 61. num. 6. Rot. recen. deciſ. 323. num. 4. par. 2. & deciſ. 221. num. 14. par. 16.*

Maximè cum aliqui ex Teſtibus vt ſuprà deponentibus ſint lugatarij eiuſdem Franciſcæ Pompiliæ, itaùt ipſi depoſuerint ad proprium commodum; ſubſiſtente enim inhoneſtate bona deuoluerentur ad dictum Monaſterium, & conſequentèr ipſi remanerent excluſi à ſuis legatis, *l. nullus ff. de Teſtib. l. omnibus C. eod. Crauett. conſ. 99. num. 2. & conſ. 112. nu. 10. Bertazzol. conſ. crimin. 60. num. 8. lib. 1.*

Et quatenùs fidem facerent, huiuſmodi declaratio ad nihilum deſcruiret, quià nemo præſumitur velle detegere propriam tur-

turpitudinem, vt in his terminis reſpondit; *Rot. diuerſ. par.* 4. *deciſ.* 276. *num.* 4. Et ſicuti non fuiſſet credendum ipſi met Franciſcæ Pompiliæ præſertim extrà iudicium, & ſine Iuramento deponenti, *Feller. in practic. verb. & ſi confitebuntur in* 2. *par.* 3. *partis principalis num.* 9. *& ſeqq. cùm alijs adductis per Farinacc. quæſt.* 43. *num.* 23. ita, & multò minus credendum venit prædictis Teſtibus nè plus fidei adhibeatur exemplo, quàm originali *vulg. cap. fraternitatis de hæretic. Farinacc. quæſt.* 69. *num.* 85. *Cyriac. controu.* 250. *num.* 9.

Nec valet dici, quod nemo præſumatur immemor ſalutis æternæ; quia nec omnes præſumuntur eſſe S. Ioannes Baptiſta, vt dicit *Bald. in tit. de Pac. Conſtant. verb. Vaſſalli il primo in vſibus feudorum*, præſertim vbi agitur de præiudicio tertij; *Bartol. in l. ſi quis* §. *ſi quis moriens ff. ad Senat Conſul Syllan.*; In fortioribus terminis *Marſil. in pract.* §. *Reſtat num.* 12., *&* 16. *in fin. Bertazzol. conſ. crimin.* 234. *nu* 2. *pr. lib.* 2. *pr. Prat. reſponſ. crim.* 23. *n.* 32., *& ſeqq.*, *Rouit. ſupèr pragmat. Regn. tit. de recept. delinquent. pragmat.* 6. *num.* 5. *Farinac. d. quæſt.* 43. *num.* 28. *cum duob. ſeqq. & quæſt.* 46. *n.* 72. *Hyeronim. Laurent. deciſ. Auenion.* 15. *num.* 16. *iuncto num.* 8., eò magis quandò agitur ad effectũ grauiùs puniendi eiuſdẽ declarantis inimicum; *Maſcard. de probat. concl.* 144. *num.* 8., *& ſeqq.*

Subſiſtente itàq; Cauſa honoris nil prorsùs officit, quod dicta homicidia fuerint cõmiſſa ex Interuallo iuxtà latiſſimè firmata in præterita §. *nec verum eſt, vſq; ad* § *prædictis nullatenus*, vbi oſtenſum fuit hanc eſſe communiſſimam Doctorum opinionem, & iuxtà illam paſsim Iudicari non ſolùm in Sacra Conſulta, verùm etiã in omnibus alijs Tribunalibus Mundi, vt benè animaduertit *Mattheù* allegatus in dicta præterita *de Re Crimin. controu.* 12. *num.* 7., *& 21.*

A qua quidèm opinione in præſenti recedi nequit ex eo, quod D. Guido vxorem non occiderit in actu deprehenſionis eiuſdem in fuga cùm Amaſio; quinimò contentus fuerit illam deferre Iudici vti Adulteram; quià cùm tunc ei non fuerit tutum illam occidere (quià ipſe erat ſolus, illa autem in ſocietate dicti Amaſij Iuuenis fortis, ſtrenui, armis muniti, & delinquere ſoliti; & quod magis eſt prompti, & parati ad reſiſtendum ne amata Amarillis eidem raperetur, quemadmodum & ipſa prompta fuit, & parata ad Impediendum enſe

etiàm capto, & denudato, vt dilectus Mirtillus non offenderetur) non propterea censeri debet eidem peperciſſe, & Iniuriam remiſiſſe, ſed cũ, ne aufugeret in longinquiores partes, ſine ſpe debitæ vindictæ, iuſtus, & repentinus dolor tùnc illi conſuluerit eam arreſtari facere per birroarios, vt cùm primũ commodè poſſet illam occideret, peruenta poſtmodum commoda occaſione, ſi illam occidit, reputari debet, ac ſi incontinenti eamdem occidiſſet in puncto *Ruin.conſ.2. num.7.verſ. ſi maritus occiderit vxorem lib.5. Giurb.conſ.86. num.19.verſ. ſic maritus,& num.21., Io.Franc.de Pont.conſ.98.num.24.,& ſeqq. vſq; ad nu.33.vol.pr. repetit.ſubtùs deciſionem Sanſalic. 337.num.81.,& ſeqq.vſq;ad n.90.Prat.reſponſ.crim.25.n.31., & ſeqq. Cabrer. de met. lib. 2. cap. 45. num. 13., verſ. celebris ſuccedit Quæſtio,& verſ. realis eſt, Paſchal. de patr. poteſt.par. pr. cap. 5. ſub num.3., Mattheu de re Crimin. contr.12. n. 28., nouar. in Summ.Bullar.par.pr. Commentar.72.num.81.verſ.ex quo Adulterio, Polic.de Reg.Aud.To.2. tit. 10. cap. 7. num. 29. verſ.quemadmodùm tùnc dicitur incontinenti, Marta vot., ſeù deciſ.206. num. 7., & num. 10., præſertìm in verſ. ſed quando committitur, Mut. deciſ. Sicil.61. ſub num.11. Gizzarell.deciſ. 18. num. 5., ibiq; Baldax. de Angel. nu 4. & Didac. de Mari ſub num.7. Panimoll.deciſ.86. num.29., & duobus ſeqq.*

Et generalitèr, quod ea, quæ fiunt ex Interuallo dicantur fieri incontinenti, ſi fuerunt facta cùm primùm fuit oblata occaſio illa faciendi, eſt *Textus in l.2. §.Confeſtìm*, ibi -- *Confeſtìm autèm ſic erit accipiendum, vbi primum potuit — ff. ad Sen. Conſult. Tertullian., Bellon.de poteſt. eorum, quæ fiunt incontinenti, lib. pr. cap. 6. num 5., & pluribus ſeqq.*

Et tantùm abeſt, quod lex præſumat hanc Iniuriam à marito remiſſam, vt imò credat ſemper in illo durare animum vlciſcendi, ex quo fit, vt vxor teneatur etiã ſibi præcauere, adeò, vt ipſius cædes poſteà ſequuta numquàm dicatur proditoria *Maſtrill.ad Indult.gener.cap.29.num 6.verſ.ſed quid ſi maritus, Nouar.in Summ.Bullar.dicta par.pr.Comment.72. n. 81., Donde. conſult.97. num. 16.verſ. alioquìn*, ad quod multùm facit etiàm *Mut. dicta deciſ. Sicil. 61. per totam*, vbi eſt caſus de marito, qui fecerat vocari vxorem per filium extrà mœnia Ciuitatis, vt tutò illam ibi occideret, & tamèn maritus fuit damnatus ſolum ad Remigandum per ſeptennium.

Et

Et facit etiàm id, quod alij Doctores tradunt, quod ſcilicèt maritus poſſit diſſimulare turpitudinem ſuæ vxoris, vt tutò poſteà de illa vindictam ſumat *Io.de Amic.conſ* 4.*nu*.4., *Anonym. apud Sanfelic.dicta deciſ.* 337.*num.* 37. *in fine, & n.*59. *Dond. conſult.* 97. *num.* 16. ſicuti poteſt illam diſſimulari facere per vxorem, vt ſecurè ſumat vindictam de illo, qui vult eius pudicitiam offendere iuxtà famigeratiſſimum Conſilium *Caſtr.* 277. *lib.* 2.

Tantò magis, quod ab ipſomet D. Procuratore Charitatis defenſore dictæ Franciſcæ Pompiliæ, & Canonici Camponſacchij *in ſua allegatione impreſſa* §. *horreret quidèm Animus* dictus D. Guido fuit reprehenſus de huiuſmodi delatione ad Iudicem, per ea, quæ aduertunt *Caſtrenſ. dicto conſ.* 277. *ſub num.*3. *propè fin.verſ ſed nec Iudices, lib.*2., *Menoch.de Arbitr. caſ.* 398.*num.*26., *Neuizan. Silu. nuptial. lib. pr. verſ. non eſt nubendum nu.*34., *& num.*89., *Soccin. Iun. conſ.*34.*nu.*9.*lib.*2. *Nouar.in Summ.Bullar. Comment.* 72.*ſub num.* 81. *verſ. vndè meritò*; quorũ plures & nos allegauimus in noſtra *præterita Informatione* §, *& hæc noſtra*, Aſſerunt enim vnanimiter prædicti DD., quod mariti reputantur viles, & Cornuti, ſi proprijs manibus non ſumunt vindictam, ſed expectant illam fieri per Iudices, qui ſummoperè rident,& cachinantur,vndè non mirum, ſi Infelix maritus etiàm poſt dictum recurſum factum ad Iudicem, quem tùnc illi ſuggeſſit Inconſultus Iræ Calor, voluit de amiſſo honore ſe vindicare; deliquit enim, vt vulgi, & Doctorũ Cẽſuram euitaret, & ſic ne amiſſo honori iſtam quoq; Ignominiam ſuperadderet.

Nil autem refert, quod D. Guido in dicta ſua Confeſſione aliquando vltrà Cauſam honoris expreſſerit etiam illam Inſidiarum, quæ tendebantur ſuæ vitæ, quia cum illa honoris fuerit potiſſima in ipſius mente, vt ipſemet aſſerit d fol.678. ibi - *In riguardo, che li medemi mi haueuano tolto l'honore, che è il Principale* - non eſt curandum de alia, quæ tamquam Debilior, prædictæ venit poſt ponenda, vt præuentiuè firmatum fuit, *in præterita*, §. *& in omnem Caſum*, vbi præ cæteris adduximus in his præciſis terminis loquentem *Mattheu de Re Crimin.contr.* 11.*num.*37.*& duob.ſeq.*

Et quatenùs hanc etiam Cauſam attendere velimus, iſta pariter eſt ſufficiens ad euadendam Pœnam ordinariam *l.* 1.*Cod.quã-*

do

do lic. vnicuique, l. ſi vt allegas, Cod. ad leg. Cornel. de Sicar. l. nec timorem 7. verſ. timuit enim mortem, & verſ. ideò iuſtus fuit timor, ff. de eo, quod metus Cauſ., Innoc. in cap. ſi verò 3. ſub num. 1. de ſent. excom. m. Bertazzol. conſ. Crimin. 433. num. 4. & ſeqq. & conſ 434. num. 22. Thob. Non. conſ. 109. num. 6. Cepol. Crimin. 41. num. 10. vſque ad finem, Farin. conſ. 35. num. 22. Cyriac. contr. 105. num. 73. & ſeqq. Boer. dec. 169. num. 2. Grammatic. dec. 5. per totam, Baldax. de Angel. in Addit. ad Gizzarel. dec. 5. num. 6.

Agnoſcit fiſcus releuantiam prædictorum; idcircò recurrit ad Circumſtantias delictum concomittantes, nempè Coadunationem hominum Armatorum, litem vertentem inter Dominum Guidonem, & Comparinos, qualitatem Armorum prohibitorum, & denique ad locum vbi delictum fuit commiſſum, cum ſcilicèt Franciſca Pompilia detineretur loco Carceris in domo in qua fuit occiſa, ſed facilis eſt Reſponſio, quia huiuſmodi circumſtantiæ poſſunt quidem aliqualitèr exaſperare pœnam delicti Principalis, ſed nullatenus illam extollere ad ſummum apicem, adeo, vt D. Guido, eiuſque Socij vltimo ſupplicio venìant puniendi; ſic deciſum in terminis habemus apud *mut. d. deciſ. ſicil. 10., præſertim in fine*, ibi - *facta ergò relatione in viſita generali menſe Martij 1617. coràm excellentia ſua, ex quo viſus fuit malus modus eam occidendi ſic vocata per filium, & poſtea eius Cadauer quaſi repertum fuit, quod Canes commedebant extrà d. mœnia, fuit ipſe Leonardus condemnatus ſuper regijs Triremibus per annos ſeptem* - *Sonfelic. d. deciſ. 337. num. 13.* ibi - *& quamuis aliqui ipſorum fuerint damnati ad relegandum fuit ex cauſa inciſionis Genitalium de facto, pro quo delicto dicebat Fiſcus eſſe puniendos leg. Corneliæ pœna de Sicarijs* - *Mattheu. de re Crimin. d. contr. 11. num. 46.* ibi - *at re maturiùs in Aula perpenſa iudicatum fuit Maritum nimis dolosè operatum fuiſſe abſentiam ſimulando, fratrem ſecùm ducendo, atque Armis prohibitis necando, quia ſolum ex vſu Armorum igneorum delictum redditur inſidioſum apud nos &c. ſic deciſum fuit propter hunc exceſſum condemnandum fore in pœnam exilij per quadriennium, & ad ſoluendum duos mille ducatos &c. quæ in gradu ſupplicationis fuit confirmata* - *& contr. 12. ſub n. 29.* ibi - *Et ſic deciſum in ſpecie propoſita condemnando Franciſcum Palo-*

Palomeque in pœnam Remigij per decennium &c. ex qualitate Armorum igneorum pœnam aggrauando ; in ſimilẽ pœnam fuit condemnatus Antonius Aluarez , qui vxorem appenſate occiderat, quia meretricabatur &c. ex eo exacerbata pœna , quod omiſſus Iudicatus fuit, cum non conquereretur de ſimplici adulterio, ſed de vita meretricis quod perfici nequibat ſine deſidia, vel conuenientia Mariti .

Et ratio eſt manifeſta , quia negari non poteſt , quin D. Guido , eiuſque Socij prædicta omnia geſſerint ex eadem Cauſa honoris , propterea ſicuti iſta reputatur ſuffic ens ad euadendam pœnam ordinariam homicidij , de qua *toto titulo ff. & Cod. ad l. Cornel. de Sicar.* ità pariformitèr ſufficiens reputari debet ad effugiendas alias qualcumque pœnas appoſitas in Conſtitutionibus Apoſtolicis contrà committentes alia delicta in eiſdem expreſſa ; ſemper enim attenditur principale propoſitum in Delinquente ; *l. ſi quis nec Cauſam ff. ſi certum petatur* ; cuius etiam animus ſemper diſtinguit malefica, *l. verum eſt, et l. qui iniuriæ ff. de furt.* vt in puncto ad effectum ſcilicèt euitandi pœnam indictam in *Conſtitutione 75. ſa. me. Sixti V. Bullar. nou. To. 2. pag. 468.* contrà Coadunantes homines armatos , quotieſcumque conſtat illos fuiſſe coadunatos ad effectum committendi aliud Delictum , ſcilicèt frangendi Carceres, & detentos in eis eximendi reſoluerunt tres Sacræ Rotæ Auditores celeberimi, nempè *Coccin. Blanchett. et Oran.* , quorum vota habentur impreſſa inter deciſiones collectas *per Farinacc. poſt eiuſdem conſil. vol. 2. dec. 61. ibique Add. in fine*, teſtatur ſic fuiſſe reſolutum in plena Camera , in qua de mandato ſa. me. Clementis VIII. Cauſa fuit propoſita, & examinata.

Non refragante , quod poſtmodum incontrarium ſcripſerit fouendo partes fiſci, cuius erat Aduocatus *Spad. conſ. 25. lib. 1.* quia eius opinio fuit ex profeſſo confutata, & ſolidiſſimis rationibus , & argumentis reiecta *à Vermigl. conſ. 356. per tot. et à D. Rainaldo obſeru. par. 3 cap. 25. §. 4. à nu. 9. vſque ad 33.* & ante eos idem quoque ſenſerat *Doctor Anonymus inter Conſil. Farin. conſ. 65. à numer. 68. ad 141. et ipſemet Farinacc. quæſt. 113. num. 60. Guazzin. de confiſc. ampliat. 86. concl. 13. num. 3.*

Et in terminis ad effectum euitandi pœnam bannimentorum ,

ſeu

ſeu Conſtitutionum Apoſtolicarum delationem Armorum prohibentium plures Doctores allegaui *in præterita* §. *neque verò*, & præ alijs *Polic. de Reg. Aud. Tom. 2. tit. 10. cap. 6. num. 8. & ſequentibus*, qui latè materiam examinat, alios congerit Dominus meus Procurator Pauperum *in ſua præſenti Informatione* §. *remanet tandem*, quibus addo *Caball. reſol. crimin. caſ. 62. per totum*, *Mattheu de crimin. dicta controuerſ. 11. num. 46. cum ſequentibus*, & *dicta controuerſ. 12. ſub num. 29. Capyc. latr. dec. 78. num. 7. verſ. diſcuſſo tamen negotio*, vbi quia actus præparatorius confunditur cum præparato, & teſtatur ità fuiſſe reſolutum per *Sac. Conſ. Neap. & num. ſeq.*

Similiter ad effectum effugiendi pænam appoſitam contra occidentes detentum in Carceribus, & ſic exiſtentem ſub cuſtodia Principis plures Doctores allegauimus *in præterita* §. *ſimiliter nec aggrauari*, quibus nunc addo *Prat. in addit. ad Paſchal. de Patr. poteſt. part. 3. cap. 6. verſ. ex his quoque D. Raynald. obſeru. part. 1. cap. 4. §. 1. ad 4. num. 65. & ſeqq. Mut. deciſ. Sicil. 36. in fine.*

Nec quidquam facit, quod *Polic. loco citato*, & aliqui alij ex Doctoribus proximè allegatis loquantur de homicidio commiſſo in rixa, ſiue ad defenſionem propriæ vitæ; intantum enim circumſtantia rixæ releuat delinquentem ab ordinaria pæna delicti, inquantum ignoſcitur ei, qui voluit vlciſci prouocatus, vt inquit *Vlpianus in l. qui cum natu maior* 14. §. *idem puto. ff. de Bon. libert.* & in quantum ipſe tunc iuſto dolore præuentus non eſt in plenitudine intellectus, vt poſt *Bald. in cap. 1. in fine, de pac. iuram. firman.* tradit *Boſſ. tit. de homic. n. 60. in fin. Vermigl. conſ. 26. n. 8.*

Vtraque autem ex his rationibus proculdubio militat in marito, & quocumque alio homicidium committente ex Cauſa honoris iuxtà firmata *in præterita* §. *hoc ſtante*, & §. *ſequenti*; etiamſi id faciant ex interuallo ex allegatis pariter *in præterita* §. *nec verum eſt cum multis ſeqq.*

Et in his præciſis terminis, quod ſcilicet occidens vxorem adulteram ex interuallo excuſetur ob iuſtum dolorem, qui facit, quod ipſe non ſit in plenitudine intellectus præ cæteris firmant *Carer. in pract. crimin. tract. 3. de homicid. §. ſexto igitur excuſat iuſtus dolor, num. 4. fol. 160. à tergo*, *Gomez ad l. Tauri*

ri 80.*num.*58. *verſ.item homo*, *Mattheu de re.crimin.d. Controu.*12.*n.*14.

Inquit enim *Vlpianus in l.mariti* 29. *in princip. ff. ad l.Iuliam de adult.* ibi : *debuit enim vxori quoque iraſci, quæ matrimonium eius violauit*. Iram autem fieri ex dolore acceptæ contumeliæ, & naturam eo modo inſurgere, vt illam à ſe depellat, quocumque modo poteſt,benè aduertit *Zacch.qq. Medicoleg. lib.2.tit.1.quæſt.6. num.* 28. *& ſeqq.* cum difficiliùs ſit iram cohibere,quàm miracula facere,vt inquit *D.Gregor. dial.*1. & aduertit *Boſſ.tit.de homic. num.*60. *Vermyl. conſ.*26.*nuu.*7. *& conſ.*43.*num.*3.

Alij verò Doctores loquentes de committentibus homicidium pro defenſione propriæ vitæ cum Armis prohibitis,& in Carceribus pariter ſuffragari debent, quia defenſo honoris proprij à viris ingenuis præſertim nobilibus nedum vitæ æquiparatur *l.iuſta ff. de manum.vend.* ſed ipſimet vitæ antefertur iuxta illud *Apoſtol.epiſt.*1. *ad Corinth.cap.*9. *Expedit mihi magis mori, quam vt gloriam meam quis euacuet. Et D. Ambroſ. lib.*3. *offic.cap.*4. *Quis enim vitium Corporis, aut Patrimouij damnum non leuius ducat, vitio animi, & exiſtimationis aiſpendio? Marc.Tull.Philippic.*3. *Ad decus, & libertatem nati ſumus, aut hæc teneamus, aut cum dignitate moriamur. Menoch.conſ.*96.*num.*15.*& conſ.*98.*num.*8., *Valenz.conſ.*92.*n.*1. *vſque ad* 7., *Prat.reſponſ.crimin.*25.*num.*29.*& pluribus ſeqq. Ioſeph Mele in addit. ad Gizzarel.deciſ.*18. *num.* 6. *& ſequentibus*, in his terminis *Bertazzol. conſ.* 42. *num.*6. *Dond. conſult* 97.*num.*8. *&* 9. *Sanfelic.dec.*337. *ſeu in allegat. Aduocat. ibidem Impreſſ.num.*34. *& ſeqq.* *Panimoll. deciſ* 80. *num.*23., *& ſeqq.*

Adeò, vt qui honorem ſuum ſpernit,& non curat recuperare ſe vlciſcendo nil differat à Belluis, *Gizzarell.dicta deciſ.*18. *n.*5. *num.*5. *Calderò deciſ.*42.*ſub num.*35. *& alij ex mox citatis*; Quinimò irrationabilior ipſiſmet Belluis reputetur, iuxta aurea verba *Theodorici apud Caſſiodor.lib.*1.*var.epiſt.*37., quæ nos retulimus *in præterita* §. *Nec verum eſt poſt medium, Bertazzol. dicto conſ.*42. *num.* 9. *verſ. & ſi non eſt pluſquam Beſtia*.

Qnouerò ad litem,quæ vertebat inter Dominum Guidonem, & illos de Comparinis ſuper ſuppoſitione Partus, vltrà mox dicta,

cta, iterùm ſupplico animaduerti quod Conſtitutio Alexandrina non intrat, vbi ex parte offenſi præceſſit aliqua prouocat, vt benè firmat *Farinaec. conſ. 67. per totum*, ſequendo deciſionem Rotæ, quam ponit in calce eiuſdem Conſilij, & nos præuentiuè perpendimus *in præterita* §. *abſque eo quod*, quæ quidem prouocatio in præſenti reſultat ex iniuria, quam dicti de Comparinis pendente lite irrogarunt eidem D. Guidoni propter complicitatem habitam in d. fuga, & in adulterio per filiam illius occaſione commiſſo.

Altera lis, quæ prætenditur mota per Franciſcam Pompiliam aduerſus Dominum Guidonem ſuper diuortio, potuiſſet omitti, quia vltra animaduerſa per Dominum meum Procuratorem Pauperum *in ſua præſenti Informatione* §. *quæ etiam aptantur*, ea fuit nulliter intentata, exequuto ſcilicet, vt mihi ſupponitur, monitorio dumtaxat contra Dominum Abbatem Paulum fratrem Domini Guidonis, qui nullum ad hoc mandatum habebat, præcipue non probato, quod idem D. Guido habuerit ſcientiam eiuſdem litis, vt prætenditur, intentatæ.

Quoad Blaſium Agoſtinelli abundè fuit ſcriptum in præterita, cùm ſcilicet ipſe non fuerit denuò conſtitutus, & in præcedentibus faſſus fuerit dumtaxat adſtitiſſe dictis homicidijs, non autem manus appoſuiſſe, ita, vt illum nullatenus afficere poſſit rigoroſa opinio *Caball. reſol. criminal. caſ. 300. numero 73.* dicentis huiuſmodi Auxiliatores haud eſſe immunes à pæna homicidij, quotieſcumque proprijs manibus aliquem occidant, quamquam huius authoris opinio fuerit per nos erronea demonſtrata *in præterita in* §. *quidquid in contrarium*,

Voluiſſem etiam aliquid addere dictis in præterita ſuper forenſitate, & minori ætate Dominici, & Franciſci; Verum quia nondum benè innotuit, quo iure Fiſcus prætendat illas elidere, ideò ſatisfaciam in Reſponſione, pro certo credens in præſenti non euenturum, quod Dominus meus Fiſci Aduocatus ſuas allegationes conficiat, & noſtris etiam reſpondeat abſque eo, quod mihi communicentur, prout cum ſummanè dum mei, ſed aliorum admiratione contigit in præterita; ipſe enim, ſicut & ego vnicè debemus quærere veritatem, eiuſque eſſe Aduocati, ſicuti ambo ſumus officiales Principis,

iuxta

iuxta animaduerſa per *Dominum Raynald. obſeru. p.2. cap.19. §.1.n.156.*, qui quidem nil aliud eroptat, quàm, quod iuſtitia miniſtretur, & cum agatur de pauperibus, carceratis, in eorum cauſis pietas triumphare debet, quia ipſi ſunt theſaurus Chriſti, vt benè ad noſtrum propoſitum inquit *Petra ſuper Rit.M.C.Vic.rit.23.nam.4. circa med.*

Quate &c.

Deſiderius Spretus Adu. Paup.

Illuſtriſs. & Reuerendiſs. Dño

Vrbis

GVBERNATORE

In Criminalibus.

Romana Homicidiorum.

PRO

D. Guidone Franciſchino, & Socijs Carceratis.

CONTRA

Fiſcum.

Noua Iuris D. Aduocati Pauperum.

ROMÆ, Typis R. Cam. Apoſt. 1698.

Notizie di fatto, e di ragioni per la Cauſa Franceſchini.

Pietro Comparini, le di cui ſoſtanze non ſi ſtendeuano ad altro, che alla ſomma di dieci, in dodici mila ſcudi ſottopoſti à fideicommiſſo, con peſo anche di moltiplicare i frutti per vna buona porzione, che perciò hauerebbe douuto viuere parcamente per non ridurſi in ſtato di miſerie, ſtante il vincolo di tutto il capitale, e di vna parte de medeſimi frutti, eſſendo troppo indulgente alla gola, e dedito all'ozio, e hauendo preſo moglie con pochiſſima dote, con eſſergli ſopragiunte liti, venuta la reduzzione de frutti de luoghi di Monte, & altre auuerſità, ſi riduſſe in ſtato aſſai pouero, e miſerabile, à ſegno che, ſeguita più volte la di lui carcerazione per debito, e fatta l'indicazione de beni, riceuè dal Palazzo Apoſtolico la limoſina ſegreta d'ogni meſe.

Ritrouandoſi in tali anguſtie, premeditò maritare Franceſca Pompilia ſua figlia con qualche perſona, che ſi prendeſſe cura di ſoſtentarlo inſieme con Violante Peruzzi ſua Moglie, Donna molto ſcaltra, e di gran loquacità, con il di cui parere haueua intrapreſo l'affare, e fù ſtimato à propoſito il partito con Guido Franceſchini, il quale conducendo la Spoſa, e i Genitori in Arezzo ſua Patria, hauerebbe potuto trouare opportuno rimedio alle neceſſità delli medeſimi, mediante l'aſſiſtenza in Roma dell'Abbate Paolo Franceſchini di lui Fratello, huomo attiuo, e diligente, con dar ſeſto al patrimonio di Pietro ſequeſtrato, e intrigato da ſuoi Creditori, onde eſſendo ſtata conſtituita la dote in luoghi ventiſei di Monte, con la ſperanza della futura ſucceſſione al rimanente de i beni in virtù del fideicommiſſo, al quale la Spoſa era chiamata, fù abbracciato queſto partito, come vtile a Pietro, e ſua moglie per liberarſi da gl'incommodi, ne quali ſi ritrouauano, e altresì vantaggioſo alli Franceſchini, che atteſa la diligenza dell'Abbate, e qualche diſpendio temporaneo della Caſa, poteuano credere di douere guadagnare à ſuo tempo il peculio predetto quaſi intiero, e poco, ò nulla deteriorato.

A Tali

Tali furono à principio i ſcambieuoli oggetti dell'infauſto matrimonio, dal che ſi conoſce, quanto ſia debole pretesto il dire, che Guido ne i trattati ingannaſſe Pietro, e la Moglie nel dar nota di godere vn'annua Entrata di ſcudi mille ſettecento, trouata poi molto inferiore, perche il fine primario, con cui fù concluſo, poteua molto ben conſeguirſi, anche con vn'Entrata di ſomma molto minore, ſapendoſi in effetto, che eſſendo ſtata moſtrata da Violante l'iſteſſa nota à Pietro Comparini, diſſe nel vederla *oh oh mi baſterebbe ſolo che foſſe la metà*, e ſarebbe ſtata grandiſſima balordaggine di Pietro, che ad vna ſemplice nota di vn Foreſtiere, ſenza pigliare altre informazioni, haueſſi dato marito alla figlia, ogni volta, che la cauſa impulſiua foſſe proceduta dalle preſuppoſte facoltà in detta nota: Anzi ne meno in grado di conuenienza, e ciuiltà puol eſſere riconuenuto Guido, perche quando da Pietro fù prodotto in giudizio la detta nota, l'Abbate Paolo Franceſchini ne reſtò fortemente marauigliato, onde ſgridatone con lettere il fratello, queſto riſpoſe hauer ciò fatto à perſuaſione di Violante, la quale deſiderando l'effettuatione del matrimonio, e vedendo irreſoluto il Marito, per animarlo, induſſe Guido à dare la ſudetta nota con alterazione.

Hebbe dunque effetto il matrimonio, e tutti inſieme ſi conduſſero alla Città d'Arezzo, doue i Comparini non furono maltrattati, come ſi pretende di giuſtificare da vna fede extragiudiciale di vna Serua partita di Caſa con diſguſto, la di cui ſola lettura baſta per farla conoſcere fatta con animo cattiuo, e à iſtigatione di altri, conforme ella medeſima ſi è dichiarata con diuerſe perſone, dimoſtrandolo con naufea l'inſipida affettazione, con cui è concepita, e ſpecialmente, doue dice, che vn'Agnellino di latte ſi faceua ſeruire per alimento ſufficiente per ſette, ò otto perſone in vna ſettimana intiera con altre ſimili improprietà da non crederſi, mà furono trattati con ogni honoreuolezza, e decoro, conforme atteſtano Monſignore Veſcouo, e il Signore Commiſſario di detta Città, Soggetti molto qualificati, e molto più degni della Serua maligna, e ſubornata, e ſi puole hauere ancora l'atteſtatione di vno, che hà ſeruito in quella Caſa per tredici meſi, nel tempo, che vi ſono ſtati li ſudetti Pietro, e Violante

lante, potendo raccontare molte particolarità de i buoni trattamenti, che riceueuano da i Franceſchini.

Ben è vero, che nacquero disturbi di conſiderazione in quella Caſa cagionati dalla lingua mordace di Pietro, e dalla ſuperbia di Violante ſua Moglie, mentre beffandoſi di tutti gl'andamenti, che faceuano i Franceſchini, auuanzandoſi con atti di ſuperiorità, portarono alla Madre de i Franceſchini, e con eſſa à tutti gl'altri della famiglia, trauagli rileuantiſſimi, diſſimulati però all'hora, per non violare le leggi dell'Hoſpitalità, e ciò non oſtante, quando Pietro, e la Moglie ſi diſpoſero per il ritorno à Roma, ſubito che n'eſpreſſero i loro voleri, furono proueduti di danaro per il viaggio, e in Roma di mobili per riordinare la Caſa derelitta.

Giunti in Roma Pietro, e Violante, fù ſpedito monitorio giudiciale à iſtanza di Pietro, in cui egli eſpoſe, che Franceſca Pompilia realmente non era ſua figlia, e però non era tenuto ſodisfare alla dote promeſſa, e per giuſtificarlo portò l'atteſtazione dell'iſteſſa Violante ſua Moglie, quale in ſoſtanza diceua, che ella medeſima per tenere à dietro i Creditori del Marito in vittù delli fideicommiſſi, e per godere anche il frutto de Luoghi di Monte, haueua finto d'eſſere grauida, e poi d'hauer partorita vna figlia, cioè la detta Franceſca Pompilia hauuta da vna viliſſima partoriente per opera di vna Oſtetrice.

Da vn'atto ſi biaſimeuole diuulgato in vn ſubito per tutta la Corte, nacque per neceſſità di natura ne i Franceſchini vn' odio intenſo verſo gl'Autori di eſſo; mà poterono aſtenerſi da i douuti riſentimenti con la ſperanza, che, ſe Franceſca Pompilia non foſſe ſtata figlia di Pietro, e Violante, come ſi era preſuppoſta nelli ſponſali, ſi ſarebbe potuto annullare il matrimonio, e coſi purgarſi da tal macchia la loro reputazione. Teſtimonij di queſti loro ſentimenti ſono molti Dottori, e Virtuoſi, che furono richieſti da i Franceſchini, à ſtudiarne il punto, e dirne il loro parere, mà perche queſti furono diſcordanti, non vollero allora i Franceſchini cimentarſi à vna impreſa d'eſito dubbioſo, nella cui promozione doueua neceſſariamente confeſſarſi, e preſupporſi la non filiazione, dalla quale confeſſione poi ſarebbero reſtati

ſtati pregiudicari nell'intereſſe della dote, e perciò ſtimarono bene il tralaſciare per all'hora d'eſporſi al pericolo di perder la dote, e di non poter dare di nullità al matrimonio.

S'oppoſero bensì al monitorio, e ottennero per Franceſca Pompilia la manutentione nel quaſi poſſeſſo della filiazione, e il decreto per trasferire i luoghi di Monte dotali, mà eſſendoſi Pietro appellato da tal Decreto, nel far proporre la Cauſa nella Segnatura di Giuſtizia, venne à vna copioſa diſtributione di Scritture per Roma, fatte da lui ſtampare di grauiſſimo pregiudizio all'honore de Franceſchini, per non dire infamatorie, i quali hebbero di nouo tanta forza da poter raffrenare i giuſti riſentimenti dell'animo loro irritato sù la riſleſſione della ſperanza, che haueuano di poter far conoſcere alla Corte, come ſeguì, non meno le menzogne de gl'Auuerſarij, che il loro proprio candore, e auuiuati da queſta ſperanza, ſoffrirono ſuſſeguentemente con ogni patienza moltiſſime veſſationi ordite con diuerſe Cabbale, e tergiuerſazioni per impedire l'effetto della traſlatione de luoghi de Monte dotali, con hauerli ſuſcitati i Comparini vari ſuoi Creditori, ò foſſero veri, ò pure colluſiui, onde ſtante le dette oppoſizioni, prouarono bensì l'incommodo, e la ſpeſa della traslazione, mà non già il commodo del frutto, di cui ne pure vn bimeſtre poterono già mai riſcuotere.

In tale ſtato erano giunti gl'affari dell'vna, e l'altra parte, quando Guido leuatoſi vna mattina trouò mancarſi nel letto la moglie, onde immediatamente leuatoſi, vidde ſualigiati li Scrigni, e fuggita la Donna, non ſenza ſoſpetto d'hauer dato il ſonnifero la ſera antecedente al medeſimo Guido, e a tutta la famiglia, e sù la conſideratione d'eſſere ciò ſucceduto per le ſuggeſtioni di Pietro, e Violante, conforme n'haueua più volte ſentite le minaccie, s'incaminò velocemente per la ſtrada di Roma, e doppo vn precipitoſo viaggio giunte la fuggitiua nell'Oſteria di Caſtel nouo accompagnata dal Canonico Caponſacchi d'Arezzo, e perche eſſendo ſolo, e diſarmato, e quelli armati, e riſoluti, ſi conobbe inſufficiente à vendicare tale eccesſo, ſtimò opportuno di farli arreſtare con il ricorſo alla Corte di detto Luogo,

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la quale hauendo fatto cattutare da ſuoi Sbirri tutti due i fuggitiui, furono conſegnati alla Corte di Monſignor Gouernatore di Roma, e condotti alle Carceri nouue.

E benche ſopra queſto particolare faccia ſtrepito il Fiſco, che il Franceſchini douelſe vendicare i ſuoi oltraggi nell'atto del ritrouamento; per adeguata riſpoſta ſi deue riflettere all'impoſſibilità di eſeguire la vendetta per la precauzione di armi, con le quali ſeppe il Franceſchini per il viaggio, che andauano premuniti i fuggitiui, à ſegno che la Donna, quando vidde il Marito, hebbe ardimento di correrli alla vita col ferro nudo, per la qual coſa fù prudente temperamento in quell'iſtante di aſſicurare la fuga, mediante l'arreſto, tanto più che all'ora non era noto l'adulterio della moglie, e forſe hebbe repugnanza d'imbrattarſi le mani nel ſangue di colei, che haueua tenuta più volte frà le ſue braccia, mentre poteua reſtarli viua qualche ſperanza di riſarcire la ſua reputazione per altre ſtrade, che dell'vccifione.

Mà doppo, che furono trouate lettere delli medeſimi fuggitiui ſcambicuolmente amoroſe, sfacciate, diſoneſte, e preparatorie alla fuga, e dall'eſame del Vetturino reſtò paleſe, che per viaggio in Caleſſe non faceuano altro, che baciarſi impuramente, e dal depoſto dell'Oſte ſi venne in cognizione, che haueuano dormito ambedue nella medeſima Camera; e finalmente dalla ſentenza, ò decreto del Tribunale nella condannagione del Canonico Caponſacchi alla relegatione per trè anni in Ciuita Vecchia, *per hauer conoſciuto carnalmente Franceſca*, ſeguì la notorietà, e publicità dell'adulterio: Conſideri ciaſcheduno, che hà ſentimento di honore, in quali anguſtie, e agitazioni d'animo ſi trouaſſe il pouero Guido, mentre l'iſteſſi animali irragioneuoli con la maggior ferocia, che poſſa ſuggerirli l'iſtinto naturale, deteſtano, e abominano la contaminazione della fede coniugale, vendicando non ſolamente l'impudicitia delle loro Compagne, con l'vccifione dell'Adultero, mà ancora gl'oltraggi, e l'ingiurie, che ſi fanno alla reputazione de i loro Padroni, come racconta Eliano *nel lib.* 11. *Hiſtor. Animal. cap.* 15. di vn' Elefante, che vendicò l'adulterio del ſuo Padrone con la morte del-

la moglie, e dell'Adultero trouati assieme nell'atto dell'adulterio, e vi sono anche altri simili esempi, come riferisce il *Tiraquell. in l. connub. l. 13. gloss. 1. num. 1. cum seqq.*

Ritornando alla serie del fatto, è da saperſi, che doppo la carcerazione de i fuggitiui essendo venuto à Roma ancora Guido, e stando afflittissimo, e quasi delirante per l'eccesso della sua moglie; da suoi buoni Amici fù confortato con la speranza, che questo attentato della fuga, congiunto con la mancanza della filiazione di Franceſca, col di cui supposto contrasse li sponsali, hauerebbe facilitato il disciogliimento del Matrimonio, e per questa strada si sarebbero cancellate tutte le macchie dell'offesa sua reputazione, onde egli con tale speranza se ne ritornò alla Patria, lasciando la condotta dell'affare all'Abbate suo fratello. Testimonio ne può essere Monsignore Segretario della Sacra Congregazione del Concilio, à cui l'Abbate Paolo rappresentò il fatto con supplicarlo à voler proporre in quella Sacra Congregazione l'articolo, sopra l'inualidità del Matrimonio à suo tempo, cioè doppo, che si fosse ottenuta la sentenza criminale nel Tribunale di Monsignore Gouernatore.

Frà tanto l'istesso Abbate attese di proposito à sollecitare la terminazione di detta Causa criminale, e mentre Pompilia per non essere conuinta delle lettere amorose, era ricorsa al refugio di non sapere scriuere, fù facile all'Abbate poterla conuincere di questa menzogna con l'esibizione de Capitoli matrimoniali sottoscritti di proprio pugno anche da essa, e da vn Cardinale già defonto con la recognizione de' caratteri, ma ciò non ostante, essendosi diuulgati i meriti della causa da per tutto, s'accorse il medesimo Abbate, che in vece di esser compatito, à poco, à poco ogn'vno cominciaua à beffarlo, e deriderlo, conforme egli riferì à più persone, forsi perche sicome fù tentato in Roma d'introdurre il poter peccare impunemente contro la Legge di Dio con la Dottrina del Molinos, e col peccato filosofico, ilche fù impedito con l'autorità del S. Vffizio, così molti hauerebbero desiderato, che si scancellasse dalla mente degl'huomini l'estimazione dell'honore, e della riputazione per poter peccare impune-

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mente contro le leggi humane, e dar luogo agl'adulterij ſenza alcun ritengo di vergogna, e di roſſore.

E però certo, che l'Abbate vedendo prolungare il proſeguimento della Cauſa, hebbe giuſto motiuo di portarſi a' piedi di Noſtro Signore con Memoriale, nel quale eſponeua di non potere più reſiſtere à tante, e così varie liti, e veſſationi procedenti da queſto infeliciſſimo matrimonio, ſupplicandolo à deſtinarli vna particolare Congregazione, per tutte le Cauſe, cioè della filiazione, fuga, adulterio, dote, & altre dependenti dal matrimonio, come anche ſopra la di lui reſciſſione, mà non hauendo riportato altro reſcritto, che *Ad Iudices ſuos*, reſtò con la douuta raſſegnazione al Prencipe, aſpettando in primo luogo l'eſito della predetta ſentenza criminale, dalla quale ſperaua poterſi riſarcire almeno in parte la riputatione della ſua Caſa.

In tanto Pietro Comparini abbondante di danaro ſomminiſtratoli con larga mano da perſona ignota, e forſi amante della Giouane, trionfaua baldanzoſo, nei circoli, e nelle botteghe, luoghi di ſua ſolita reſidenza, encomiando la riſolutione, e lo ſpirito di ſua figlia nell'hauer ſaputo burlare i Franceſchini con la fuga vituperoſa, e con la rapina delle coſe più preziose, e nell'hauer trouato ripiego di dare sì belle riſpoſte al Giudice nei Conſtituti col riferirne le particolarità, vantandoſi ancora, che in breue ſarebbe tornata à caſa ſua al diſpetto de i Franceſchini, contro i quali haurebbe moſſo tante liti, e malanni, che ſarebbero ſtati coſtretti à tacere, e laſciar correre, delle quali coſe ſe ne potranno hauere atteſtationi da molte perſone, quando biſognino, onde per tali pungenti iattanze, e per tanti ſtrapazzi s'andaua ſempre più eſacerbando l'animo di Guido, con tutto che haueſſe procurato di fare ogni ſforzo per raffrenare gl'impeti del ſuo ſdegno da tante ingiurie prouocato.

Era ſtata Franceſca Pompilia dalle carceri traſportata preuentiuamente nel Conſeruatorio chiamato della Scaletta, oue ſi trattenne per il corſo d'alcuni meſi, nel qual tempo ſcopertaſi grauida, e fatti molti tentatiui per procurarne l'aborto, al di cui effetto le furono mandate più volte polueri, & altri ingredienti dalla Madre, ilche eſſendo riuſcito indarno, fù con il preteſto di oppilazione, e neceſſità di purgarſi riman-

data alla Casa di Pietro, e Violante, doue seguì la ricognizione della grauidanza con l'accesso de i Medici: mà la verità si è, che crescendo il vtero, non vollero le Monache, che seguisse lo sgrauio di esso nel loro recinto, e perciò fù trouato il ripiego di farla vscire à cagione della sudetta oppilazione, e del bisogno di purga.

Or quì conuenne rompere i legami della sofferenza all'Abbate, che se bene restaua offeso di riflesso, cioè nella persona, e onore di Guido suo fratello, nientedimeno pareuagli, che la fronte d'ogn'huomo fosse diuentata vno specchio, in cui rimirasse l'imagine del ludibrio di sua Casa, onde auuilitosi l'animo suo per altro virile, e costante, proruppe più volte in lagrime dirottissime di dolore fino à sentirsi sospinto ben spesso à gettarsi nel fiume, conforme palesò à tutti i suoi Amici, e per sottrarsi da sì imminente pericolo, fece risolutione di abbandonar Roma, la Corte, le speranze, gl'haueri, i suoi amoreuoli, e qualificati Padroni, e quanto di bene haueua accumulato per lo spatio di trent'anni nella medesima Città, dalla quale partitosi con quella afflizzione, che ognuno puole imaginarsi, andò à ricercare vn Clima affatto ignoto, e straniero, oue non giungesse il fetore de' suoi vituperi, quantunque da esso, e dalla sua Casa non meritati.

Mà l'offesa di Guido procedendo da più acerbe, e più graui punture, internandosi nelle sue viscere come Marito, hebbe forza di eccitare lo sdegno fino all'estremo, e considerando non esser sufficiente ripiego il punir se stesso con vn volontario esiglio per i delitti altrui, mentre dal mondo poteua essere giudicata vna tal risoluzione, argomento euidente di debolezza, e viltà d'animo, e hauendo sicure notizie, che Pompilia sgrauatasi del mese di Decembre di vn figlio maschio in casa del Comparini mandato occultamente à balia, non solo manteneua l'infame corrispondenza col Canonico Caponsacchi, riceuuto (conforme è stato detto) per ospite nella sudetta casa, ma ancora, che più d'vno auuoltoio si raggiraua intorno à quelle mura per giungere con augumento delle sue vergogne à mettere il rostro, e gl'artigli nella carne bramata, prouaua gagliardissime commozioni nel sangue, che lo stimolauano ad appigliarsi à ogni più disperata risolutione.

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Intanto volgendo, e riuolgendo quasi delirante i suoi funesti pensieri, sù i riflessi, che si trouaua aborrito dagl'Amici, discacciato da i parenti, e mostrato à dito da tutti nella sua Patria, e precorrendo la fama. che in Roma si vendeua con mercato infame la sua riputazione, la qual cosa doppo la morte di Pompilia hà dato motiuo al Fiscale delle Conuertite di mandar precetti, e pigliar possesso, aggiungendosi i continui rimproueri, che riceueua dal perduto suo honore, ebro tutto di furie, si partì di Arezzo in compagnia della disperazione, e giunto in Roma, portatosi alla Casa, che era l'asilo de suoi vituperij, non potè dubitare quanto fosse in venerazione il solo nome dell'adultero, mentre fingendo di presentare vna lettera di sua commissione, le furono subito spalancate le Porte, e posto à pena il piede nella soglia, vidde farsegli incõtro il suo disonore, che doue da lungi ne riceueua solamente le impressioni in idea, allora baldanzoso, e trionfante non hebbe timore di rinfacciarle con volto smascherato tutte l'ingiurie, che erano state commesse in quella Casa contro il suo decoro; onde rimirando da per tutto incrostate le mura de suoi grauissimi scorni, e delle sue infamie rotti gl'argini della ragione, precipitò nel miserabile eccidio d'immergersi con funesta catastrofe nel sangue degl'oppressori della sua reputazione.

Nè puol mettersi in dubbio, che il Franceschini habbia commesso vn'eccesso da disperato, e che la mente sua furibonda fosse totalmente destituta dell'vso della ragione, mentre hauendo perduto la robba, perduto la moglie, perduto l'onore, altro non li restaua, che perdere, se non miserabilmente la vita; perche, come dice, parlando di vn'huomo irato il dottissimo naturale, e giurista *Paolo Zacchia nelle sue questioni Medicolegali lib. 2. tit. 1. quæst. 6. dopo il numero 16. Est enim impetus ille talis, ac tantus, vt omninò nihil ab insania, & furore differre, apertissimè affirmauerit Galenus*, soggiungendo al *num.* 20. ciò che de iure è noto, che i delitti commessi in tale stato si punischono con minor pena, ancorche si trattasse del delitto atrocissimo del parricidio *Calder. decis. crim. Cathalon. 43. num. 33. lib. 1.* e molte altre cose al nostro proposito riferisce al *num.* 27. con i seguenti, e queste propositioni di teorica si riconoscono à pun-

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to in atto pratico verificate in Guido, poiche, come totalmente furioso, e priuo di senno, commise vn'attentato sì grande in hora benche notturna, frequentata molto dal popolo, dopò di cui non curandosi di alcuna precauzione, ò circospezione, con la quale ogn'altro di mente sana haurebbe procurato gouernarsi, si pose in viaggio per la strada maestra di settanta miglia in circa di confine senza preparazione di caualcature, come se fosse vn semplice viandante di ritorno di Roma, le quali circostanze come segni euidenti di mente offesa, e delirante, osserua *il Calder. nella sopradetta decis. Cathalon. crim. 43. num. 35.* verificandosi in quest'attione quello, che scriue San Gieronimo nelle sue Epistole. *Vbi honor non est, ibi contemptus est: ibi contemptus, ibi frequens iniuria: vbi iniuria, ibi & indignatio: vbi indignatio, ibi quies nulla: vbi quies non est, ibi mens à proposito sæpè deiicitur.*

Nè in questo caso entra la distinzione legale, se dall'irato si commetta il delitto nel primo impeto dell'ira, ò pure con interuallo di tempo, perche questa distinzione potrebbe forsi hauer luogo, quando l'ira è nata da vn'ingiuria di fatto transitorio, e non permanente, mà quando come nel caso, di cui si tratta, l'ingiuria prouocatrice dell'ira, consiste in atti frequenti, e reiterati, cioè non tanto nel passaggio della Donna dal Conseruatorio alla Casa di Pietro con vn vano, e ridicoloso pretesto, mà di vantaggio nella permanenza in detta Casa con le circostanze aggrauanti d'infamia, come si è detto di sopra, allora, sicome l'ingiuria è permanente per li continui affronti, che l'ingiuriato riceue, così la vendetta s'intende presa in continenti, e senza alcuno interuallo, come i Signori Difensori della causa hanno sufficientemente prouato nelle loro non meno erudite, che dotte scritture, con fortissimi argomenti, e insuperabili dottrine.

Nè vale il dire, che resti aggrauato il delitto per la qualità delle armi, perche, come dice Virgilio *furor arma ministrat*, nè per la squadriglia, ò vogliam dire conuenticola, nè per il luogo, eccesso, ò altre circostanze considerate dal fisco, perche in vn furioso tutto è scusabile, essendo assioma, e principio certissimo, che *natura eo modo insurgit, vt à se depellat quocumque modo potest &c.* in conformità di quel-

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lo dice il *Fracaſtoro* ſeguitato dal *Zacchia loco citato n.27.*, e in vero vn'animo ingenuo, e che fa ſtima del ſuo honore, e della ſua riputazione, ogni qual volta reſta offeſo atrocemente in parte cotanto ſenſibile, e cotanto delicata, ogni qual volta giunge al termine del furore, e della diſperazione, perduto ogni lume di ragione, come delirante, e frenetico, non puole appagarſi, nè meno ſe giugneſſe à ſconuolgere, quando li foſſe poſsibile, i Cardini dell'Vniuerſo per annichilare non ſolamente gli Autori, ma ancora il luogo, e la memoria de ſuoi ſcorni, e de ſuoi vituperi, *quia zelus, & furor Viri non parcet in die vindictæ, nec acquieſcet cuiuſquam precibus, nec ſuſcipiet pro redemptione dona plurium*, come parla in queſto propoſito lo Spirito ſanto per bocca di Salomone nei Prouerbi al 6. in fine; al che molto bene conferiſce quello, che dottamente ſcriue *San Bernardo in Epiſtol. ad Robert. Nepot. ſuum in princip. Dolor quippe nimius non deliberat, non verecundatur, non conſulit rationem, non metuit dignitatis damnum, legi non obtemperat, iudicio non acquieſcit, modum ignorat, & ordinem.*

A tal ſegno non vi è dubbio, che giungeſſi Sanſone, quando caddè in poteſtà de ſuoi Nemici. Soffrì con animo intrepido la priuazione degli occhi, e altre dolenti ſciagure, mà quando ſi vidde deſtinato à ſeruire di traſtullo ne i luoghi publici, e che in quelli vdiua le derifioni, e le beffe del Popolo, s'accеſe lo ſdegno nel ſuo petto, con impeto tale, che tutto ſmanie, tutto furie *moriatur*, diſſe, *anima mea cum Philiſtijn*, e data vna ſcoſſa alle Colonne, che ſoſteneuano il Palazzo, lo riduſſe in ruina, *multoſque plures interfecit moriens, quàm viuens occiderat*, come riferiſce il Sacro Teſto; e Chriſto medeſimo, ancorche foſſe manſuetiſſimo, e haueſſe ſomma ſofferenza nel riceuere gli obbrobrij, e gli ſtrapazzi ſenza mai lamentarſi, nientedimeno, quando ſi ſentì toccato nell'honore, riſpoſe *Honorem meum nemini dabo*; & è certo, che chiunque apprezza la reputazione, e l'honore, ſtima molto meno il morire huomo honorato ſotto vna mannaia, che viuere per molti ſecoli in faccia al mondo con vergogna, e dishonore.

Queſto

Questo argomento così forte ha procurato debilitare in fatto vn' accorto inſtigatore aderente al Fiſco, hauendo procurato, che eſca dalla dottiſſima penna di Monſignore Fiſcale vn periodo, che dice: *Verùm quia pro parte de Comparinis prætendebatur ſubminiſtrationem alimentorum ad Franceſchinum in Conſeruatorio ſpectare, & pro parte Franceſchini dicebatur ad Comparinum pertinere Illuſtriſſimus, & Reuerendiſſimus D. Gubernator, habito priùs conſenſu Abbatis Pauli germani fratris Guidonis, & Procuratoris in Cauſa, Domum de Comparinis eidem Franciſcæ pro tuto, & ſecuro Carcere ſub fideiuſſione aſſignauit*; mà questo fatto ſi giuſtifica chiaramente, che non hà alcuna ſuſſiſtenza.

Quando Franceſca Pompilia dalle Carceri doueua condurſi al Conſeruatorio, fù richieſto l'Abbate Franceſchini a proueder la degli alimenti, con proteſta, che repugnando, farebbe comparſa perſona terza, e ignota, che n'haurebbe aſſunto il peſo con ſuo diſhonore, onde l'Abbate volendo dar fine vna volta alle occaſioni di riceuere nuoue vergogne, e togliere ogni attacco di conſeruare ne meno vn minimo ſegno di attinenza con l'obbrobrioſa Cognata, accettò il mezzo termine propoſtoli con queſte circoſtanze, cioè che il Lamparelli come Procuratore della Carità ne haueſſe fatto il prouedimento con lo sborſo de propri danari per riualerſene contro chi di ragione li competeua, ſicome poi ſe ne rimborsò ſopra il danaro, che era ſtato trouato appreſſo la fuggitiua rubbato al Marito, e nella di lei cattura poſto in depoſito nell'Vffizio, oue ne reſtò anche tanto, che in fine d'ogni coſa fù conſegnato il reſiduo al medeſimo Abbate.

Quando poi dal Conſeruatorio detta Franceſca Pompilia fù traſportata alla Caſa di Pietro, e Violante, tutte le circoſtanze antecedenti, e ſuſſeguenti dimoſtrano per molto inuerisimile, che l'Abbate vi deſſi il conſenſo, anzi che non trouandoſi negli atti oue ſia regiſtrato il detto conſenſo, appariſce chiaramente, che non foſſe dato, e ne meno poteua legitimamente darlo, non eſſendo Procuratore del Fratello in queſto particolare, ſtante che il ſuo mandato ſi reſtringeua ſolamente alla facoltà di potere ricuperare il dana-

danaro, e altro, che staua in deposito nell'Vffizio, come resta giustificato negli atti, e dal racconto, che fece l'Abbate all'hora à suoi Amici, e conoscenti, si distrugge totalmente l'assertiua del Fisco, mentre diceua essergli stato notificato, che la Giouane per necessità di purgarsi, in riguardo all'indisposizione testificata dal Medico, douesse vscire dal Conseruatorio, e portarsi alla Casa paterna, al che parendoli d'esser burlato, rispose, che si poteua commodamente adempire la purga d'vna Donna nel Conseruatorio, senza esporla à pericoli tanto euidenti di maggior vituperio, marauigliandosi molto, come in vn subito fosse ritornato l'affetto di Padre in Pietro Comparini verso Pompilia, che tante volte l'haueua negata per figlia insieme con la Moglie, e come potessero i medesimi essere, e non essere Genitori di detta Donna, secondo i loro desideri in pregiuditio della Casa Francescchina.

E se bene l'istigatore, per colorire l'honestà di detta Donna, hà mendicato diuerse giustificationi, è da notarsi, che in sostanza tutto quello, che si dice in questo proposito è fondato in ciò, che con la propria bocca in fauore di se stessa, e per discolpa de suoi mancamenti hà proferito la Donna, tanto in questa congiuntura, quanto in quella della fuga, come nel Processo da riuedersi, costando in fatto tutto il contrario, con aggiungerui le proue esteriori, che voleuano fare le Conuertite, dalle quali si astennero hauuta la notizia del Parto del figlio maschio; e piacesse à Dio, che ella hauesse osseruate le Leggi della santa honestà, che da suoi capricci non sarebbe succeduto eccidio così grande. Auuertendosi in oltre, che l'asserta dichiarazione fatta dalla Donna in articolo di morte puole essere equiuoca in se stessa con il senso, che doppo la Confessione, & Assoluzione Sacramentale resti cancellato il peccato, come se mai fosse stato commesso, in modo che in foro poli non habbia più bisogno di perdono; onde da tutte le sopraccennate circostanze, e ragioni validissime, non vi è da dubitare, che il Francescchini sia meritcuole del compatimento, che danno le Leggi, per causa degli eccessi, che traggono l'origine da gli stimoli dell'honore; e quando mai fossimo ne i termini, che questa causa douesse essere giudicata coll'*expedit*, dourebbe senza difficoltà

ficoltà essere punito leggiermente il Franceschini, per rintuzzare l'orgoglio all'Impudicitia, e alla Sfacciatagine, che come Donne non mancandogli seguaci, trionfano per tutta Roma, in compagnia del Tradimento, tanto in publico, quanto in priuato, con oppressione, e derisione dei Mariti, che fanno stima della loro riputazione, dando titolo di *freddure* alle circospezioni, che si deuono hauere per la conseruazione del proprio Decoro.

SVMMARIVM

Num. 1.

Obligatio emiſſa à Franciſca Pompilia de habendo Domũ pro Carcere.

Die 12. Octobris 1697.

IN mei &c. D. Franciſca Pompilia Vxor D. Guidi Franceſchini de Aretio in eius libertate poſita &c. promiſit &c. habere hanc Domum D. Petri q. Franciſci Comparini &c. ſitam in via Paulina pro tuto, & ſecuro Carcere, & ab ea non diſcedere, neque de die, neque de nocte, etiam ianuis, & feneſtris apertis, ſub quouis prætextu &c. etiam animo redeundi &c. & ſe præſentare &c. poſtquam conualuerit, ac toties quoties &c. ad omne mandatum Illuſtriſſimi, & Reuerendiſſimi Domini &c. Almæ Vrbis Gubernatoris *pro cauſa de qua in actis &c* etiam nouis, vel non nouis ſuperuenien. indicijs ſub pœna ſc. tercentorum Reu. Cam. Apoſtolicæ applican. in caſu &c.

Sequitur fideiuſſio in forma.

Charitas Notarius.

Num. 2.

Fides Baptiſmi Franciſcæ Pompiliæ.

Fidem facio ego infraſcriptus &c. qualiter in libro Baptizatorum fol. 152. reperitur infraſcripta particula videlicèt

Die 23. Iulij 1680. Ego Bartholomæus Minius Curatus Baptizaui infantem natam 17. huius ex D. Petro Comparino &c. & ex D. Violante Peruzi Coniugibus degen. in hac Parochia, cui nomen impoſitum fuit Franciſca, Camilla, Victoria, Angela, Pompilia &c. In quorum fidem &c. Romæ hac die 9. Februarij 1698.

Ità eſt Petrus Otthobonus Curatus S. Laurentij in Lucina.

Cari miei Genitori.

Num. 3.

Epiſtola Franciſcæ Pompiliæ ſcripta in Carceribus Caſtri noui ſuis Genitoribus.

Vi fò ſapere, come io ſono quì in Caſtel nouo carcerata per eſſer fuggita con vn Signore, che voi non conoſcete, ma *è Parente del Belichini, che fù à Roma, che haueuo à venire con lui, ma per eſſere ammalato non hà potuto venire*, ma è venuto queſt'altro, & io ſono venuta con queſto, *perche la*

la mia vita era a hore, perche Guido mio Marito mi voleua vccidere, perche haueua certi suoi sospetti non veri, e per questo mi voleua vccidere, & Io vi mandai quelli apposta, e voi non credeui, che fosse mia mano quelle lettere, che vi mandai, ma vi dico, che Io hò finito d'imparare di scriuere in Arezzo, però vi dico, che questo, che ve la porta s'è mosso a pietà, e mi hà dato la carta, e quello mi hà bisognato, però voi subito, che hauete letto questa mia, venite quì in Castel nouo per darmi qualche aiuto, che mio Marito mi fà contro, quanto puole, però se voi volete la vostra figliola, venite subito, e resto perche non hò più tempo li 3. Maggio.

Foris -- Al Sig. Pietro Comparini mio Padre alla strada Vittoria. Roma.

Num. 4.

Alia Epistola eiusdem in qua obiurgatur Canonicus de inhonestate.

Rendo infinite grazie dell'ottaue, che mi hauete date, quali sono tutte al contrario della Rosalinda, che tanto è honesta quella, tanto e lasciua questa, *e mi marauiglio, che voi che sete tanto casto, hauete composte, ò copiate cose tanto poco oneste &c. ma io non vorrei, che voi faceste così in ogni cosa, come hauete fatto in questi libri, che il primo è stato tanto oneste, e queste ottaue tutte il contrario, che voi da tanto oneste, che sete, diuentasse tanto ardito, il che non credo &c.*

Num. 5.

Partitula Testamenti Petri Comparini.

In tutti, e singoli miei beni &c. mia Erede vsufruttuaria istituisco la Signora Violante Peruzzi mia Consorte &c. E morendo detta Signora Violante sostituisco nel detto vsufrutto della mia vniuersale Eredità Francesca Pompilia moglie del Sig. Guido Franceschini d'Arezzo, e questa sostituzione la faccio per li suoi buoni costumi, e per hauer'essa vissuto in buona fede per molto tempo, & anni d'esser mia figliola, si come della Signora Violante mia Consorte, & io d'essergli Padre, ritrouandosi tanto essa medesima, come Io in tal credulità ingannati, mercè alla vanità de pensieri malamente esaminati dalla detta mia Consorte con hauermi supposto il Parto della medema, e da detta Signora Violante mia Consorte per scrupolo di coscienza scopertomi dopò il Maritaggio di Francesca Pom-

Pompilia medesima, e da me riconosciuto esser vero Parto supposto con le notizie prese da persone d'integra fede. *Con conditione però, che detta Francesca Pompili debba ripatriare, e dimorare in Roma sua Patria &c. nella quale Città spero viverà castamente, & onestamente, e da buona Cristiana, e non ripatriando, ò ripatriando vivendo con sfacciata impudicitia* (che Dio non permetta) *voglio, che decada dall'vsufrutto di detta mia Eredità*, e sia fatto luogo alla sostituzione a favore dell'infrascritto mio Erede proprietario &c. perche così &c. e non altrimente &c. E perche potrebbe darsi il caso, che rimanesse Vedoua, ò si dissoluesse il Matrimonio, stante la lite, che verte avanti Monsignor'Illustrissimo Tomari per l'atti dell'Oliuieri della sua filiatione, però volendo detta Francesca Pompilia rimaritarsi, ò farsi Monaca, in tali casi, ò caso, voglio, che si possa smembrare dalla mia Eredità sino alla somma di scudi mille moneta ad effetto, che si possa rimaritare, ò monacare, se gli piacerà, *insinuandola non rimaritarsi* per non soggiacere al secondo, ò ad altri inganni, dandoli in oltre facoltà di poter testare fino alla somma d'altri sc.ducento moneta della mia Eredità, & in euento, che premorisse detto Sig. Guido alla detta Francesca Pompilia &c. per il che ne venisse la restitutione del denaro da esso Sig. Guido riceuuti in somma di sc.sertecento in circa &c. che lo stimo se non impossibile almeno difficilissimo per esser detto Sig. Guido miserabilissimo, e la sua Casa assai pouera, voglio non gli si computino alla detta Francesca Pompilia nelli detti sc.1000., ne tampoco nella facoltà di testare perche così &c.

Num. 6.

Mandatum procuræ factum à D. Guidone Franceschino in personâ D. Abb. Pauli eius fratris.

Die 7. Octobris 1694. D. Guidus q. Thomæ de Franceschinis de Arctio sponte &c. fecit, & constituit &c. eius verum &c. Procuratorem &c. specialem, & generalem &c. ita tamen &c. D. Abb. Paulum de Franceschinis eius germanum fratrem Romæ degentem &c. ad eius, & nomine dicti D. Constituentis, & pro eo agendum, & defendendum omnes lites, & causas ciuiles, & mixtas motas, & mouendas qualibet de causa, & contra quoscunque vbique locorum, & signanter Romæ tam actiuè, quàm passiuè coram

coram quocunque D. Iudice tam Eccleſiaſtico, quàm ſæculari, Congregatione, ſeu Tribunali, & coram eo, vel eis libellum dandum, excipiendum, litem conteſtandum, iurandum de calumnia, & quodlibet aliud licitum Iuramentum præſtandum &c. ac omnia, & ſingula alia acta opportuna, & neceſſaria gerendum, & procurandum eo modo, & forma, & prout facere poſſet d. Conſtituens, ſi præſens eſſet, & dicto Procuratori &c. liberè videbitur, & placebit &c. promittens &c. rogans &c.

Ego Ioſeph &c. de Riccij Notarius publicus &c. Aretinus rogatus &c. in fidem &c.

Illuſtriſs. & Reuerendiſs. D.

Vrbis
GVBERNATORE

In Criminalibus.

Romana Homicidiorum.
cum qualitate.

PRO

Fiſco.

CONTRA

D. Guidum Franceſchinum, & Socios.

Summarium.

ROMÆ, Typis R. Cam. Apoſt. 1698.

Ill.^me & Reu.^me Dñe. AD quid tempus terere in diſputatione articuli, an Adulterium, quòd prætenditur exaduerſo Commiſſum à Franciſca de Comparinis cùm Canonico Caponſacca ſit ſufficienter iuſtificarum, dum nos in prima noſtra facti, & Iuris informatione diximus reſolutum ſolum fuiſſe in Congregatione prò pœna Relegationis in Ciuitate Vetula aduersùs præfatum Canonicum, & retentionis in Conſeruatorio eiuſdem Franciſcæ ob defectum probationis dicti Adulterij, & Iure meritò, quià nec ipſe Canonicus nèc dicta Franciſca ſunt confeſſi, minuſquè conuicti, & quia præſumptiones exaduerſo deſumptæ ſunt leues, ac equiuocæ; quamuis etiam ſi eſſent graues atquè vrgentiſſimæ non ſufficerent ad conſtituendam Concludentem probationem, ſed ad ſummum inducere poſſent animum Iudicis ad aliquam pœnam leuem, ac arbitrariam imponendam, vt teſtatur *Farinacc. de Communi DD. opinione quæſt.* 136. *num.* 24.

Strictè ideò inſiſtendum ſolum venit prò parte Fiſci non licuiſſe Guidoni Franceſchino vxorem non deprænenſam in Adulterio, ac in actibus venereis, & ex interuallo occidere abſquè incurſu pœnæ ordinariæ *l. Cornel. de Sicar.* proùt Maritum occidentem vxorem ex interuallo à dicta pœna non excuſari probauimus ex multorum inſignum DD. auctoritate in prioribus ſcriptis §. *Alij verò*.

Quo iacto fundamento diximus Iura Fiſci controuerti minimè poſſe in Caſu, de quo agitur, dùm DD. exaduerſo allegati excuſantes à pœna ordinaria Maritum loquuntur in Caſu ſimplici, qui proindè extendi non debent ad Caſum qualitatibus, ac circumſtantijs valdè grauatum, ea ratione, quia non poteſt eadem eſſe pœna, quando maius delictum eſt in vno Caſu, quam in alio iuxta *Text. in l. final. ff. de Calumniat. Bald in l. cùm proponas num.* 12. *Cod. de Nautico fœnore*, quòd in noſtris præciſis terminis etiàm comprobauimus auctoritate *Laurent. Matheu de re Criminal. controuerſ.* 12. *num.* 29. *verſ.* Ex quibus.

Nèc ad poſternendum hoc Fiſci fundamentum obijci valet, quod omnes qualitates, & circumſtantiæ, quæ pro parte eiuſdem

A Fiſci

Fiſci cumulatæ fuerunt tanquam tendentes, & præordinatæ ad finem in mente propoſitum non ſint habendæ in conſideratione cum finis, & intentio d.Guidonis Franceſchini tenderet ad occidendam vxorem,& ad vindicandum eius honorẽ,quia quantum fallax ſit hoc argumentũ ſatis compræhendi poteſt ex iam ſcriptis per nos in §.*Prima enim cum* §.*ſeq.& in* §.*ſecunda qualitas,cum* § *ſi ergo*,vbi probauimus,quod auctoritates Doctor. qui poſſent exaduerſo adduci loquuntur, & intelligi debent, quando finis eſt licitus,nec a lege prohibitus,vel quando per particulares Conſtitutiones,ac Bannimenta qualitas, ac circumſtantia non conſtituat delictum capitale prorsùs diſtinctum, & ſeparatum, ſiuè ſequatur,ſiuè non ſequatur id quod fuit in mente deliquentis præordinatum.

In noſtro caſu ex conceſsis per DD. meos Defenſores non eſt licitum, nec a iure permiſſum marito impunè vxorem pro Adulterio ex interuallo occidere, ſed ſolum à iure eidem permittitur Adulterum vilem,& Adulteram vxorem in Adulterio depræhenſam morti tradere; quomodo ergo applicandæ ſunt noſtro caſui DD.auctoritates,quæ procedunt,& ſibi locum vindicant in caſu a iure permiſſo, in quibus terminis loquitur *Laurent. Matthæus exaduerſo allegatus contr.* 11. vbi in figuratione caſus legitur Adulterum, & Adulteram fuiſſe morti traditos in domo mariti,quamuis in illo caſu maritus, non impunitus euaſerit, eo quia vſus fuerit armis igneis.

Neque ſubſiſtit in iure, & in praxi, quod delatio armorum confundatur cùm delicto patrato,Non in Iure, vt iam firmauimus in alia §.*ſi ergo*, *verſ Certius*, nec in praxi, quia in omnibus tribunalibus totius ſtatus Eccleſiaſtici ſeruatur, quod ſecuto homicidio etiam rixoſo ſi illud fuerit comiſſum cum armis deferri prohibitis ſub pœna capitali, præſertim ſi dicta arma ad manus Curiæ peruenerint accipitur,pœna maior, & homicida qui ob homicidium rixoſum in pœnam extraordinariam damnari deberet in pœnam ordinariam ob dictam armorum delationem damnatur, proùt de hac praxi in ſtatu Eccleſiaſtico vigore Bannimentorum teſtantur *Farinac. quæſt.*108.*num.*168.*& ſeqq. Guazzin. defenſ.*29.*num.*18. *verſ. qua opinio*.

Minùs applicantur cæteræ Doct. auctoritates adductæ ad eludendam diſpoſitionem Conſtitutionis Alexandrinæ, quia licèt

cèt verùm ſit, quod ad hoc vt intret pœna ab *ipſa conſtitutione* comminata debeant tria concurrere, nempè dolus cauſa litis, & quod nulla interuenerit prouocatio, vt tradit *Farinacc. in conſ. 67. num. 1.* cæteriquè ab eo citati, attamen in noſtro caſu prædicta omnia concurrunt; de dolo enim dubitari minimè poteſt, dùm ex propria confeſſione Reorum habemus præcedentem tractatum, & deliberationem homicidia committendi, ex quo tractatu præcedenti dolum oriri firmant *Decian. conſ. 32. num 15. lib. 3. Maſcard. de Probat. lib. 1. concluſ. 531. num. 73. & ſeq. Menoch. de præſumpt. lib. 5. præſumpt. 3. num. 110. Farinac. quæſt. 89. inſpect. 4. num. 97.*

De Cauſa litis paritèr non eſt ambigendum, quia ob prætenſionē Petri de Comparinis ſuper dote promiſſa, quoad Bona fideicommiſſo ſubiecta ad excluſionem dd. Guidonis Franceſchini, & Franciſcæ eius Vxoris, non ſolum inchoatum fuit iudicium, coràm A.C. Thomato, ſed etiam ab ipſomet Iudice fuit prolata Sententia fauorabilis eidem Franceſchino.

Quod autem prouocatio ex qua motus fuerit Franceſchinus ad occidendum propriam vxorem proceſſerit ex Cauſa prætenſi Adulterij habemus ex confeſſione ipſiuſmet Franciſchini ſuper qua Domini mei Defenſores principaliter inſiſtunt; quam Cauſam cùm negare minimè poſſint fuiſſe introductam Criminaliter coram Iudice ab eodemmet Franciſchino, fateri perneceſsè oportet ſibi locum vindicare Bullæ Alexandrinæ diſpoſitionem, quæ loquitur tàm de Cauſis Ciuilibus, quam Criminalibus, vt videre eſt in § *Quarto* eiuſdem Bullæ, ibi -- *Quod deinceps perpetuis futuris temporibus, omnes, & ſingula Eccleſiaſtica, Seculareſq; perſonæ cuiuſcumque qualitatis, dignitatis, ſtatus, gradus, ordinis, & præeminentiæ fuerint, quæ earum in Cauſis, tàm Beneficialibus quàm profanis, ac Criminalibus, ſiuè mixtis in dicta Curia nunc, & prò tempore pendentibus Aduerſarios, vel illas proſequentes, & procurantes, ſiuè Aduocatos, aut Procuratores ipſorum &c.* & ibi -- *ſi mutilatio membri, vel mors, quòd Deus auertat. ſubſequatur, vltra Cauſæ, & Iuris amiſsionem læſæ Maieſtatis Criminis ſententias incurrant ipſo facto.*

Et hæc currenti calamo propter anguſtiam temporis trium horarum exarata ſufficere credimus ad clarius demoſtrandum fun-

fundamenta Fiſci in prioribus ſcriptis firmata ſubſiſtere non obſtantibus exaduerſo latè, & eruditè, ſine tamen legitima probatione deductis,
Quare &c.

F de Gambis Fiſci, & R. C. A. Proc. Generalis.

Illuſtriſs. & Reuerendiſs. Dño

Vrbis GVBERNATORE

In Criminalibus.

Romana Excidij.

PRO

Fiſco.

CONTRA

D. Guidonem Franciſchinum, & Socios Carceratos.

Reſponſio Dñi Procuratoris Fiſcalis Generalis,

ROMÆ, Typis R. Cam. Apoſt. 1698.

Ill.me, & Reu.me Dñe. REdarguit D. meus Pauperum Aduocatus in principio fuæ nouæ Informationis Decretum huius ſupremi Tribunalis ſuper Tormento Vigiliæ D. Guidoni Franceſchino, & ſocijs inferendo pro habenda confeſſione immaniſſimi ſceleris ab ipſis patrati tanquam iniuſtum, exindeque confeſſiones illius metu emanatas, & eo ceſſante ratificatas, vt moris eſt, eiſdem nocere non poſſe infert; Iniuſtitiam verò dicti Decreti deſumere conatur nedum ex defectu qualitatis atrociſſimæ per conſtitutionem fel. rec. Pauli V. ſuper reformatione Tribunalium Vrbis requiſitæ, ſed etiam ex quo non poſſet irrogari pœna mortis pro Crimine, de quo agitur, & ita nec etiam ex facultatibus extraordinarijs huic Tribunali conceſſis decerni Tormentum vigiliæ, nè maior ſit aſperitas in procedendo, quàm in condemnando, vt monet D. Canonicus *Raynald. obſeruat. part. 1. cap. 5. §. 1. ad tertium num. 121. & ſeq.*

In fine verò dictæ nouæ informationis me quoque redarguit, eo quòd cum ſumma ipſius, & aliorum admiratione mei muneris obligationi, veritatem ſcilicèt quærendi, defecerim, conficiendo allegationes pro tuendis iuribus Fiſci eidem non communicatas, de quo ſatis ipſum oretenùs conquæſtum exiſtimabam, vt nouæ querelæ parcere potuiſſet, cum meum non ſit illas communicare, prout mihi nunquam ab eodem, quas ad defenſam conficit, doctiſſimæ demore informationes communes fiunt; Quod ſolum innuere operæ pretium duxi, nè meo muneri, & obſeruantiæ, qua Dominum meum proſequor, defeciſſe videar.

Præmiſſa propterea propria apologia, tranſeo ad vindicandum ab obiecta iniuſtitia decretum huius Tribunalis, & omiſſa indagine qualitatis Criminis: An ſcilicèt reputari valeat atrociſſimum, de quo ad abundantiam differui in præterita reſponſione §. *Sed quatenùs etiam cum ſequen.* oſtendendo eam ſubſtineri poſſe ob qualitates illud exaſperantes, & extollentes ad læſæ maieſtatis delictum, ex diſpoſitione Conſtitutionum Apoſtolicarum, & Generalium Bannimentorum, ſatis eſſe cenſeo in præſenti oſtendere, quòd pro illo pœna mor-

A tis

tis fit irroganda, quod facili negocio euincere ſpero, dum ex ipſa iam decreta per integerrimos Iudices acerbioris Torturæ ſpecie, dictæ quoque pœnæ locum eſſe præſupponendum eſt, itaut cum nihil noui tam in facto, quàm in iure deducatur, quod non fuerit priùs in relatione Cauſæ pro decernenda Tortura examinatum, ſuperuenta Reorum confeſſione Iudicum partes ſint executionem pœnæ promeritæ ab omnibus iam diù expectatæ pronunciare.

Dixi nil noui afferri per *DD.* Defenſores, cum præcipuus eorum conatus conſiſtat in repetenda cauſa honoris ob prætenſum adulterium patratum ab Vxore *D.* Guidonis, conſpirantibus, & adiuuantibus eius Genitoribus barbarè cum ipſa trucidatis ad excitandam Illuſtriſſimi Domini mei, ac *DD.* Iudicum commiſerationem, vt mitiùs tam ipſe, quàm Socij puniendi ſint, ex auctoritatibus pro eo adductis in prima informatione §. *Hoc ſtante cum ſeq. & §. Prædictis nullatenùs pariter cum ſeq. & in præſenti §. Verùm, & ſocios*; ſed eadem recurrit reſponſio, quod nullum Reis præſidium afferre valet exceptio prætenſæ cauſæ honoris ob eius inſubſiſtentiam in facto, & irreleuantiam in iure.

Quid quid enim ſit an ad excuſandam vindictam incontinenti ſumptam à viro contra Vxorem, vel Amaſium, ſola vehemens ſuſpicio adulterij ſufficiat ex quo illa reperta ſit in actibus Venereis vel præparatorijs ad illud, quia tunc ob inconſultum dolorem ad iram prouocantem ab illa excitatum, pœna plurimum eſt temperanda iuxta qualitatem caſus atque perſonarum, certum eſt, quod ad effectum vitandi pœnam ordinariam legis Cornelię de Sicar. pro nece Vxoris ex interuallo patrata, ſola ſuſpicio quantumcunque vehemens non ſufficit, ſed requiritur eius liquidiſſima probatio, vel ex confeſſione ipſius Vxoris, vel ſententia condemnatoria reſultans, vt præter adductos in mea præterita reſponſione §. *Solamque ſuſpicionem*, admittunt per Dominos Defenſores laudati *Maſcard. de probat. tom. 1. concl. 64. verb. Adulterium num. 8. et 9. Bertazzol. conſ. 42. num. 1. verſ. Quod autem*, *Caball. reſol. Crim. caſ. 300. num. 26. Matth. Sanz. de re Crim. contr. 12. numer. 15. Dexart. deciſ. Sard. 5. pariter num. 15.*

Talis autem probatio deficit omninò in caſu noſtro; Nam infelix Vxor Adulterium vſque ad extremum vitæ ſpiritum conſtantiſſimè negauit, vt conſtat ex atteſtationibus iuratis Religio-

ligioſorum Virorum, & aliorum, qui eidem læthaliter vulneratæ miniſtrabant, vnanimiter aſſerentium, ipſam ſemper affirmaſſe, quòd nunquam Coniugalem fidem violauerat, nec tale peccatum ſibi à Diuina Clementia remitti expoſcebat, quæ profectò aſſertio plurimi facienda eſt, cum nemo decedere præſumatur immemor ſalutis æternæ, vt vltrà relatos in præterita informatione §. *Omnemque: tradunt Menoch. de præſumpt. lib. 5. præſum. 5. numer. 3. Farin. de hæreſi quæſt. 196. num. 31. Decian. tract Crim. lib. 5. tit. de defenſ. Reor cap. 37. num. 27. Card. de Luc. de Regal. diſc. 119. num. 24. & de legat. diſc. 27. num. 10.*

Non releuantibus reſponſionibus traditis per DD. Defenſores, quòd ſcilicèt huiuſmodi probatio excluſiua adulterij ſolùm deſumatur ex fidibus extraiudicialibus, lite pendente extortis ab hærede pro remouendis moleſtijs illatis à Monaſterio Conuertitarum, & quod aliqui ſubſcripti in iiſdem ſint legatarij; Cumque talis aſſertio tendat ad tegendam propriam turpitudinem non ſit attendenda; Præſertim cum non ſit iurata, & licèt nemo præſumatur immemor ſalutis æternæ, non tamen omnes præſumuntur eſſe immunes à peccato, ſicut S. Ioannes Baptiſta, & maximè quotiès agitur de præiudicio Tertij, & de grauiùs inimicum declarantis puniendo.

Quòniam omnes facili negocio diſſoluuntur; Informitas quippe probationis obſtare poſſet, ſi Fiſcus teneretur eam aſſumere, & perfectam exhibere; At cum taleonus Reo incumbat ex ſupra traditis pro vitanda pæna mortis, quotiès Vxorem ex intervallo necauit, & tales atteſtationes ſolùm adducantur ad offuſcandum probationem prætenſi adulterij per illum adductam, in hoc certè caſu ſpernendæ non ſunt, præſertim attenta qualitate atteſtantium, cum ſint Religioſi notæ probitatis, quos, credibile non eſt, mentiri voluiſſe, *vt per Text. in cap. Si Teſtes 4. quæſt. 3. cap. In noſtra de Teſtib. tradunt Alex. conſ. 43. num. 4. vol. 7. Crauett. conſ. 267. num. 2. vol. 1. Menoch. conſ. 221. num. 3. lib. 3. Farinac. de Teſtib. quæſt. 70. numero 471. Belleit. diſquiſ. Cleric. part. 1. tit. de Clerico Teſte §. 1. num. 1., & ſeq.*

Eademque replicatione tollitur exceptio, quòd extortæ fuerint per hæredem, litependente pro remouendis moleſtijs illatis à Monaſterio Conuertitarum, quia cum agatur de probanda aſſertione emiſſa in vltimis diebus vitę atquæ in articulo mor-

tis, non poterat, niſi ea ſecuta, inſtitui probatio, & laudandus eſt hæres, qui tenetur necem defuncti vindicare, nè indignus reputetur, *vt per Text. literalem in leg. 1. C. de ijs*, quibus vt indignis ibi -- *Hæredes, quos necem Teſtatoris inultam omiſiſſe conſtiterit, fructus integros cogantur reddere &c.* monent *Angel. ibidem num. 2. Bartol. num. 1. & 5. Caſtren. numer. 1. Iaſon. num. 1.* ſi dictas atteſtationes procurauit, vt ſaltem famam Teſtatricis tueatur, quò potiùs tendebat eius ſtudium, quàm ad arcendas moleſtias indebitè illatas, & quarum ipſa ceſſatio retorqueri poteſt ad excluſionem prætenſæ probationis inhoneſtatis infelicis Vxoris.

Minuſque obſtare valet, quod aliqui ex ſubſcriptis ſint legatarij, cum eorum intereſſe non ſit adeò conſiderabile, vt a teſtimonio ferendo repellantur, vt monent *Herculan. tract. de negat. num* 215. *Lamberteng. de contract. gloſ.* 10. *num.* 4. *Boſſ. in tit. de oppoſit. contr. Teſt. num.* 123. *& ſeqq. Maſcard. de probat. lib.* 1. *concl.* 318. *num.* 4. *& lib.* 3. *concl.* 1357. *n.* 69. *& ſeq. Oſaſcb. deciſ. Pedemont.* 99. *num.* 13. *&* 38. Præſertim quotiès agitur deprobanda re, quæ contigit intra domeſticos parietes, & cuius propterea probatio difficillima reputatur, vt aduertit *Alex. conſ.* 64. *numero* 1. *lib.* 1. *Farinac. de Teſt. qu.* 6. *num.* 58. *& ſeqq.* cum ibi adductis; Talijque exceptio, quatenùs ſubſiſteret, ſuppleta remaneret ex numero aliorum Teſtium in dd. atteſtationibus ſubſcriptorum, vt tradunt *Angel. in L. qui Teſtamento num.* 3. *ff. de Teſtam. Campeg. de Teſtib. regul.* 75. *in prima fallen. Farinac. dict. qu.* 70. *num.* 63. *Rot. coram Royas dec.* 353. *num.* 5. *&* 6. *& dec.* 466. *num.* 8 *& coram Buratt. dec.* 143. *numero* 38. *& coram Merlin. dec.* 277. *num.* 11.

Exceptio verò quod aſſertio morientis, vt potè tendens ad propriam exonerationem non ſit attendenda, quia nemo cogitur propriam turpitudinem detegere, forſan procedere poſſet ſi probatum fuiſſet Adulterium, & non conſtaret, vulneratam obijſſe cum maxima Chriſtianæ compunctionis manifeſtatione, quæ mendacij ſuſpicionem excluderet, quo caſu ea non procedit, ſed ſuccedit alia validiſſima præſumptio, quod nemo credatur, velle mori ſalutis æternæ immemor, vt monet *Maſcard ex aduerſo adductus de probat. concluſ.* 144. *num.* 2. vbi reſpondet *Baldo in contrarium pariter allato in Tit. De pace conſtantiæ verbo Vaſſalli in vſib. feud. aſſerenti, quòd non om-*

omnis, qui moritur, est S. Ioannes Euangelista, ostendendo, quod ipse est sibi contrarius, dum in cons. 25. lib. 1. ait, confessionem emissam in articulo mortis valere, subditque, id ad veritatem propriùs accedere, adducendo in comprobationem *Marsil. cons. 5. numero 14. & 15. lib. 1. & Anchar. cons. 151.* affirmantem, vt si quis assereret, constitutum in articulo mortis mentiri, diceret non verisimile, & concludit, hanc opinionem esse magis æquam, & rationi, ac Iuri naturali magis consentaneam, & licèt aliquas afferat limitationes, nulla tamen casui nostro adaptatur, & quæstio, de qua ipse agit, procedit in assertione vulnerati, an faciat indicium contra inculpatum, quæ toto cœlo a nostra disputatione distat, cum vt obseruatum est, Fisco non incumbat onus probandi, nec assertio nostræ morientis principaliter tendat ad vindictam, cum ex dd. attestationibus constet, ipsam ab eadem abhorruisse, vt semper profiteretur se libentissimè viro parcere.

His potiùs ad abundantiam, quàm pro afferenda Iustitia decreti huius Tribunalis, necessitate exposcente prænotatis, facile erit prætensi Adulterij probationem per DD. Defensores adductam elidere; Nam quatenus ea desumitur ex alio Decreto eiusdem Tribunalis condemnatorio D. Canonici Caponsacchi pro fuga, & cognitione carnali Franciscæ Pompiliæ, subsistit responsio tradita, quòd non sit attendendus Titulus, sed probatio ex Processu resultans, & pœna per sententiam imposita. Adeòque licèt in Decreto, vnà cum titolo complicitatis in fuga, & deuiationis d. Franciscæ Pompiliæ additus fuerit etiam Titulus cognitionis carnalis eiusdem; Attamen dum in Processu non reperitur probatio illius verificatiua, eique pœna triennalis relegationis non correspondet, remanet propterea nudus Titulus non attendendus ex auctoritatibus adductis in præterita responsione §. *non releuante.*

Eoque minùs ex illo resultare valet probatio, adeò clara prætensi Adulterij, prout requiritur ad euadendam pœnam ordinariam pro vindicta ex interuallo sumpta, dum ad instantiam D. Procuratoris Charitatis fuit per DD. Iudices, approbante Illustrissimo D. meo, decreta correctio, subrogando generalem Titulum ad Processum relatiuum, scilicèt: *Pro causa, de qua in actis*: quæ correctio, licèt non legatur in liberculo, in quo adnotantur resolutiones vulgò *Vacchetta*,

tamen facta fuit in ſchedula tranſmiſſionis ad relegationem, & in decreto aſſignationis Domus loco carceris *Summ. nu.* 1. quæ cum facta ſit de conſenſu D. Abbatis Pauli Franceſchini eidem propterea innotuiſſe d. mutationem, affirmandum eſt ob notoriam illius ſollicitudinem in huiuſmodi Cauſa promouenda, itaut prorsùs inueriſimile ſit, ipſum non perluſtraſſe tale decretum, & obligationem factam a Petro, ſubminiſtrandi alimenta, abſque ſpe illa repetendi, ac fideiuſſionem præſtitam de habendo domum pro carcere, ex quibus ſcientia eiusdem ſufficienter probata cenſeri debet, vt firmauit *Rot. coram Bich. deciſ.* 30. *num* 30. *& ſeqq. & coram Celſ. dec* 152. *num.* 6. *& coram Cerr. dec.* 34. *num.* 40. *& coram ſa. mem. Alex. VIII. dec.* 269. *num.* 11. *& dec.* 398. *num.* 11. *par.* 18. *rec.*

Exindeque corruit reſponſio, quod non potuiſſet mutari Decretum, vtraque Parte non audita; Quia multò minùs inaudita Franciſca Pompilia, quæ ſuas adhuc defenſiones non confecerat, poterat in condemnatione D. Canonici admiſceri titulus cognitionis Carnalis ei adeò præiudicialis, nedum quoad exiſtimationem, ſed etiam quoad amiſſionem dotis, cui præcipuè maritus inhiabat, ità enim indefenſa mulier condemnationem paſſa fuiſſet, & quod peius eſt, vt oſtendit euentus, expoſita remanebat furori viri. Ac proindè talis correctio, iuſtitia dictante, merito impetrata, & executioni demandata fuit, & quatenus etiam non contigiſſet, non poterat ſententia contra D. Canonicum lata eidem nocere tanquam res inter alios acta, vt per *Text. in L. De vnoquoque, & in L. ſæpè ff. de re iudic. firmauit Rot. coram Dunoz. Iun. dec.* 797. *num.* 4. *& in rec. dec.* 392. *num.* 5. *par* 18.

Quod autem mutatio per relationem ad acta idem importet, ac expreſſio tituli cognitionis carnalis, gratis omninò aſſeritur; cum enim plures tituli priùs in decreto condemnationis expreſſi fuiſſent, ſcilicet complicitas in fuga, deuiatio, & cognitio carnalis, ſuper quibus conſtructus fuerat Proceſſus, expreſſio cauſæ in eo contentæ non eſt potiùs de vna, quàm de alia verificabilis, & certè non de omnibus, quia ſi voluiſſent omnes in Decreto reformatorio comprehendi, dictum fuiſſet -- *Pro cauſis, de quibus in Proceſſu*, cum numerus ſingularis pluribus non conueniat, vt tradunt *Surd. conſ.* 396. *num.* 9. *lib.* 3. *Palm. Nep. alleg.* 120. *num.* 6. *lib.* 2. *Rota coram Greg.*

Greg. dec. 433. *num.* 7. *& in rec. dec.* 252. *num.* 10. *par.* 19. Sed quia in Proceſſu non erat verificata cauſa cognitionis carnalis, vel pro illa damnari non poterat D. Canonicus, inaudita, & indefenſa Franciſca Pompilia propter individuitatem criminis Adulterij, quod non patitur ſciſſuram per condemnationem vnius cauſa pendet quoad alium, & præſertim dum omnes ſunt præſentes, & in carceribus conſtituti, vt monet *Text. in* L. *denunciaſſe* §. *fin. ff. de Adulter.*, *Alberic. ibid.* §. *quæritur num.* 6. *verſ. ſed reſponderi poteſt ff. ad leg. Iul. de Adulter. Salicet. in* L. *Reos num.* 1. *verſ. Hic verò*, *& num.* 3. *verſ. Item prodeſt Cod. eodem titulo*, *Ciriac. contr.* 354. *num.* 21. *Crauett. conſ.* 206. *num.* 2. *Origlia ad Campan. obſeru. ad reſol.* 24. *&* 25. *num.* 56. *& ſeq.* expreſſio propterea Cauſæ, de qua in Proceſſu, ſolùm intelligi debet de complicitate in fuga, & deuiatione, quæ poterat expediri, abſque condemnatione Franciſcæ Pompiliæ, non autem de complicitate carnali, cū relatio facta cenſenda ſit ad ea tantum, quibus diſpoſitio relatiua congruit, vt firmant *Crauett. conſ.* 548. *n.* 21. *Surd. conſ.* 431. *num.* 64. *Menoch. conſ.* 420. *num.* 78. *& conſ.* 399. *num.* 48. *Altegrad conſ.* 48. *num.* 28. *lib.* 1. *Rocc. diſput. Iur. ſelect. cap.* 42. *num.* 40. *Rota dec.* 238. *num.* 4. *par* 3. *rec.*

Idque manifeſtum redditur ex leuitate pœnæ, ad quam damnatus fuit D. Canonicus, ſcilicèt triennalis relegationis, quæ certè non correſpondet deuiationi mulieris nuptæ a Domo viri, eiuſque traductioni ad vrbem, & carnali cognitioni, quoniam circumſcripta etiam qualitate Raptus capitali pœna puniendi, niſi ageretur de perſona Eccleſiaſtica, pro ſolo Adulterio longè grauior infligenda fuiſſet, ſi eius probatio ex Proceſſu reſultaret, vt ex *Text. in cap. ſi quis Clericus diſt.* 81. *tradunt Abb. in cap. vt Clericorum num.* 8. *de vita*, *& honeſtate Cleric. Menoch. de arbitr. caſ.* 419. *num.* 60. *Diaz. in prax. crim. canon. cap.* 87. *Decian. tractat. crim. lib.* 6. *cap.* 23. *num.* 14. *Bellett. diſquiſ. Cleric. par.* 2. §. 7. *num.* 3.

Agnoſcit D. meus Pauperum Aduocatus, nimis imparem eſſe pœnam delicto acerrimè expiando, & præſertim poſt renouatam Sixtinam Conſtitutionem a ſa. me. Innoc. XI. ac propterea ad euitandum defectum probationis eiuſdem ex leuitate pœnæ iure optimo arguendum, reſpondere conatur, quòd mitiùs actum fuerit, cum D. Canonico, quia ipſe erat forenſis, & agebatur de delicto commiſſo extra Statum Ec-

cleſiaſticum, quo caſu cum ſolo exilio dimittendus erat, ſed reſponſio ex pluribus inſubſiſtens detegitur.

Primò quia ex notorio priuilegio vrbis Romæ, quæ Patria communis eſt, poſſunt in ea puniri etiam ij, qui extra ſtatum Eccleſiaſticum Pontificiæ poteſtati ſæculari ſubiectum deliquerunt, & quidem non pro ſola contrectatione, quòd cuilibet Principi licet, ſed pro ipſis delictis, vt ex *Text. in l. Roma ff. ad municipal. in terminis firmant Oldrad. conſ. 124. per totum Marſil. conſ. 99. num. 21. Petr. Barboſ. in Tit. de Iud. ad L. ſecundam §. legatis num. 18. & ſeqq Caſtald. de Imper. qu. 77. num. 7. & 8. Boſſ. in tit. de for. competen. num. 75. Cyrill. in Sum. crim. tit. vbi de crimin. agi oport. num. 18.* vbi teſtatur, ſe ita ſeruaſſe de anno 1540. in foro Capitolino, *Farinac. de Inquiſit. qu. 7. num. 12. verſ. hæc quæſtio*, vbi quod in hac eadem Curia de anno 1580. fuit ad triremes condemnatus Georgius Corſo, qui Florentiæ homicidium commiſerat, & ablato equo occiſo, Romam venerat, non obſtante, quod acerrimè cauſa pro Reo fuerit defenſa, *Boer. dec. 29. n. 7.*

Secundò quod id fortiùs procedit, quotiès agitur depuniendis delictis patratis a perſonis Eccleſiaſticis, quæ Summi Pontificis Iuriſdictioni ſubiacent, & poſſunt in vrbe de illis pœna ordinaria puniri, licèt extrà ditionem temporalem commiſſa ſint, vt aduertunt *Barboſ. citato Tit. de Iudic. ad L. ſecundam §. legatis num. 33. & ſeq. Fagnan. in cap. licèt num. 21. de for. competen.* ibi -- *Roma enim communis eſt Patria, & ideò in Romana Curia quilibet Clericus, vel Laicus conueniri poteſt, licèt ibi non delinquat &c. Farinac. citata qu. 7. ſub num. 12.*

Tertiò quod cum acceſſus ad vrbem, & traductio Vxoris ad eamdem facta prætenderetur libidinis cauſa, & pro maiori facilitate eam carnalitèr cognoſcendi, illam ſubtrahendo a Domo viri, vtique ex tali deſtinatione D. Canonicus ſe ſubiecciſſet pœnis, quæ delictum expiare poſſent, etiam in Vrbe irrogandis, ſicut eiſdem obnoxius remanet tractans in illa delictum, quamuis extra ſtatum perficiendum, vt tradunt *Alciat. conſ. 13. lib. 7. Clar. in pract. crim. qu. 38. & quæſt. 39. Caball. reſol. crim. caſ. 3 num. 7. & ſeqq.* vbi quod adtribuendam Iuriſdictionem Iudici pro delictis commiſſis, attenditur potiùs perſona offendens, quàm offenſa, *Pax Iord. elucubi canon. vol. 3. lib. 13. tit. 8. num. 194. & ſeq.*

Quartò quod prætenſa cognitio carnalis, quatenùs in Proceſſu pro-

probata dici posset, & per relationem ad illum de ipsa verificari valeret decretum reformatum, contigisset in Statu Ecclesiastico, cum eius potissimum indicium desumatur ex aff. condormitione in eadem cella in Hospitio Castri noui, per *Text. in cap. literis de præsumpt* aliasque auctoritates adductas per D. Pauperum Procuratorem in §. *sed profectò*. Adeoque non pro sola contrectatione, sed pro Adulterio potuisset, ac debuisset D. Canonicus pœna condigna plecti, si probatum fuisset, quæ cum imposita non fuerit, nisi etiam de Iniustitia redargui velit d. Decretum mitiorem pœnam irrogans, & solùm adaptabilem simplici deuiationi, & complicitati in fuga excusationibus per D. Procuratorem charitatis adductis valdè temperandam, asserendum propterea est, D. Canonicum nullatenus fuisse prò prætensa carnali cognitione damnatum nam qualitas pœnę bene arguit delicti qualitatem, cui commensurari debet, iuxtà illud *Deutheron. cap.* 25. ibi -- *Pro mensura peccati, erit, & plagarum modus* & tradunt, *Caball. cas.* 31. *num.* 19. *& cas.* 145. *n.* 5. *Chartar. dec. Crim.* 50. *nu.* 5. *& dec.* 70. *num.* 3. *& decis.* 66. *num.* 86.

Excluſa itaque prætensa condemnatione D. Canonici pro cognitione carnali Franciscæ Pompiliæ, corruit quoque prætensa notorietas Aduiterij ex illa resultàns, quæ tamen nec etiam posset contra illam indefensam allegari, & sicuti non posset in eadem licitè fundari publica vindicta a Iudice decernenda, ita nec multò minùs excusabilis existimari valet priuata a viro ex interuallo sumpta cum eiusdem nece, solùm a pœna ordinaria immunis, iuxtà mitiorem sententiam, quando per liquidissimas probationes de Adulterio constat à D. D. exemplificatas in confessione, vel sententia super illo emanata.

Prout etiam superfluum esset elidere præsumptiones per DD. Defensores, præcipuè per D. Procuratorem Pauperum adductas ad eruendam ex ipsis Adulterij probationem, sufficeret enim vnica responsio, quod omnes cumulatæ fuerunt in Processu super fuga, & deuiatione confecto ad instantiam D. Guidonis eodem vrgente pro lucro dotis propter Adulterium, & per D. pro Fisco scribentem tunc acriter super illis fuit institum, & tamen in relatione Causæ non fuerunt a DD. Iudicibus in consideratione habitæ ob ipsarum irreleuantiam, vt constat ex leuitate pœnæ contra ipsum D. Ca-

nonicum decretæ. Adeout nequeat modò illarum examen refricari poſtquam Fiſcus ſuccubuit, & adhærens ſententiæ acquieuit, a qua prouocare poterat, ſi ſe grauatum ſentiebat, nec licitum ei erat ad immanem facti vindictam conuolare; ne tamen aliquid intactum relinquatur, & Iuſtitia Decreti clarius aſſeratur; breuitèr eaſdem confutandas aſſumere operę pretium duxi.

Et quoniam primo loco conſideratur per D. Defenſorem cauſa fugæ, vt illam omninò illicitam, & ad commodiorem carnalem cognitionem ordinatam ſuadere valeat excutiendæ ſunt probationes ad id allatæ, quarum præcipua deſumitur ex aſſerta Epiſtola Franciſcæ Pompiliæ, ſcripta D. Abbati Franceſchino, Genitores inſimulando, quod ipſam adigerent, vt Virum, Cognatum, & Soctum veneno perderet, Domum comburcret, & cum Amaſio ad vrbem remearet, cuius profectò melior confutatio haberi non poteſt, quàm ex ipſo eiuſdem Epiſtolæ tenore adeò inueriſimilia, imò incredibilia continente, vt meritò ſpreta fuerit a DD. Iudicibus; Quis enim filialis amoris, & obſeruantiæ adeò expers, & immemor reperiri poterit, vt ſibi perſuadeat, tenerrimam puellam, tunc decimum quartum ætatis annum non excedentem, vt ex fide Baptiſmi *Summ. num.* 2. extrà Patrios Lares nuptam, & de diſceſſu Parentum acri dolore perculſam, & in domo Viri peſſimè habitam, vt coacta fuerit recuſus habere ad Superiores tam Eccleſiaſticos, quàm Laicos adeò improba ſibi ab ipſis tradita nedum conſilia, ſed imperia æquo animo conſcripſiſſe Viri Fratri eiſdem notoriè infenſo, niſi vt ipſa ingenuè fatetur ad ea conſcribenda coacta fuiſſet a Viro, cui citra maximum periculum hæc imperanti reluctari non poterat, cum ipſa ſola inueriſimilitudo apta legentibus horrorem inijcere ſatis oſtendat, id non ſpontè, ſed coactè geſſiſſe, iuxtà tradita per *Farinac. conſ* 22. *num.* 34 *antè med. lib.* 1. *& conſ.* 60. *num.* 31. *in fin. Caball. reſolut. crim. caſ.* 199. *num.* 36. vbi quòd non eſt admirendum, quod nemo ſanus probaret, *Vermigl. conſ.* 3. *num.* 6. *&* 7. cum alijs ibi relatis.

Ac propterea opus non eſt examinare: an veriſimilis exiſtimanda ſit qualitas confeſſioni adiecta, quod maritus deſignauerit elementa d. Epiſtolæ, quæ ſuper inducto ab ea calamo, fuerint atramento notata, quia ipſa ſcribere neſciebat. Perhorruit enim forſan etiam metu adactam ſe talia ſcripſiſſe fateri in-

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perniciem Patris, & Matris, qui tamen in misera vxore teneræ ætatis omni auxilio destitutæ extra Patrios Lares, & in domo viri est omnino præsumendus, vt tradunt *Menoch. consil. 1. num. 290. lib. 1. Crauett. cons. 114. num. 3. lib. 1. Cepol. caut. 221. num. 4. & 8. Magolon. de metu cap. 2. §. 7. num. 15.* vbi quod ex absentia consanguineorum resultat præsumptio metus, *Cappy. Latr. dec. 138. num. 16.* & præsertim post inutiliter habitos recursus ad superiores. Contraria probatio sufficienter non deducitur ex ipsius Franciscæ Pompiliæ subscriptione in capitulis matrimonialibus, & ex assertis Epistolis successiuè ab ea conscriptis, & D. Canonico transmissis, aut à fenestra proiectis, vt refert *Testis Fiscalis in Processu fugæ fol.* 108. Quoniam breuissima subscriptio exarata in Capitulis matrimonialibus non præsefert talem peritiam scribendi, vt cum eadem commoditate adeo longam Epistolam conscribere potuerit, cum quotidiana experientia doceat, plures reperiri, qui vix proprium nomen scribere valent, eaque multo minus ex assertis Epistolis probata dici potest, cum fuerint ab eadem constanter negatæ nec satis verificatæ dici valent ex assertione dicti Testis Fiscalis, quod ipsa proiecit è fenestra cartam, quam D. Canonicus collegit, & discessit, quia vltra quod est vnicus, & vilissimę conditionis scilicet in honesta Meretrix ideoque ineptus ad conuincendum, vt monet *Text. in cap. veniens, cap. licet vniuersis de Testib. Farinac. de Testib. q. 64. n. 28. Vermigl. cons. 146. num. 3. D. Canonicus Raynald. in sintax. rer. crimin. tom. 1. cap. 4. §. 10. num. 118.* nec affirmat, nec affirmare, potest, illam esse Epistolam à Francisca Pompilia conscriptam. Prout aliena manu conscribi potuissent Epistolæ in Carcere Castri noui repertæ, & quatenus etiam fuissent ab ipsa exaratæ, cum sint posteriores, non arguunt peritiam scribendi de præterito, quia hæc potuit acquiri ex post, desperatione ingenium acuente, vt D. Canonicum allitere posset ad fugam cum ipsa captandam, vt ita euaderet imminentis mortis periculum; In his enim quæ variabilia sunt, & superuenire possunt, à præsenti non benè arguitur ad præteritum, vt tradunt *Alciat. in tract. de præsum. reg. 3. præsum. 28. nu. 2. vers. Et idem credo, Crauett. de antiquit. temp. in vlt. part. num. 5. Menoch. de præsumpt. lib. 3. præsumpt. 93. num. 7.* & quod de facto in Ciuitate Aretina post discessum Parentum scribere didicerit,

constat ex eiusdem Epistola scripta in Carcere Castri noui reperta inter domesticas scripturas post obitum illius data in *præsenti Samm. num. 3.*

Verificationes quoque præfatæ Epistolæ desumptæ ex litteris D. Præsidis, seu Commissarii Aretij, Reuerendissimi Episcopi, & D. Bartholomæi Albergotti, tantum abest, vt licitam fugæ causam ab ipsa Francisca Pompilia, & D. Canonico in Processu fugæ adductam excludere valeant, vt potiùs eamdem confoueant; Nam dum redarguunt tanquam inconsultos recursus ab ipsa habitos, forsan ad se eximendum à censura, quod ipsos improuidè reiecerint, eo magis credibile est, per illos exasperatum fuisse animum ferocis viri, & immitis, ac semper, vt experientia docet implacabilis socrus, quem multò magis exacerbatum fuisse quilibet sibi persuadere poterit post motam litem super suppositione Partus, & rescissione instrumenti dotalis, & publicatas scripturas super angustia rei familiarijs, & pessimis tractationibus habitis Aretij in domo coniugum, & ex concepta suspicione amoris erga D. Canonicum, quamuis simulati ad illum alliciendum ex qua viri exasperatione capitale odium excitante, quod oritur ex lite super re magni valoris, & multo magis de toto asse, vt aduertunt *Grammat. cons. 46. num. 4. Graueti. cons. 75. num. 11. Decian. tract. crimin. lib. 3. cap. 25. num. 56. & 57. Vermigliol. cons. 321. num. 5. Farinacc. quæst. 49. num. 2.* qualis reputanda erat controuersia super suppositione Partus, negari profectò non poterit iustus timor infælicis vxoris de suæ vitæ discrimine, ad quod euadendum in desperationem acta licitè potuerit fugam arripere, quod si licitum est ob simplices percussiones vltra terminos permissę correctionis, vt post *Ancharan. cons. 408. & Tiraquell. in leg. 1. connub. num. 24.* monet *Moller. de Cornut. cap. 5. num. 24.* quantò magis licitum existimari debet, dum vxor sibi mortem ferro, aut veneno inferendam continuo timebat, pro qua vitanda prudens consilium fuit à viro recedere, & ad Patrios Lares remeare.

Satiùs quidem fuisset securitatem captare, recursum habendo ad Reuerendissimum Episcopum, vt ipsam in aliquo Monasterio, vel penes honestam matronam collocaret, vel ad D. Commissarium, qui eiusdem indemnitati, & honori familiæ viri consuluisset, aut saltem in societate cuiusdam attinentis

fugam

fugàm arripere, ſed vltra, quod timor imminentis periculi non fiuit meliora conſilia ſumere, & præſertim miſerrimæ mulieri tenere ætatis omni auxilio deſtitutæ, & expoſitæ furori viri, ac ſocrus, timerę poterat fruſtra nouos recurſus ab ipſa habendos, dum primos iam inanes experta fuerat, nec alium aptiorem modum inuenire valebat ad fugam tutò arripiendam, in qua vnicum remedium ſibi ſupereſſe exiſtimabat, quam adhibita ope, ac ſocietate Domini Canonici ſibi ad hunc effectum propoſiti à Domino Canonico de Comitibus, & Domino Gregorio Guillicchino Viro affinitate coniunctis, quos credibile non eſt ſinè maxima, & vrgenti cauſa, & confidentia de illius honeſtate, atque modeſtia in perniciem honoris eiuſdem conſpiraſſe, quorum alter, ſcilicet Gregorius ſeſe etiam exhibuerat Comitem itineris, & id quoque præſtitiſſet, ſi eius infirmitas permiſiſſet, vt ex d. Epiſtola Franciſcæ Pompiliæ poſt obitum reperta exhibita *in præſenti Summ.d.num.*3.eamdem cauſam infirmitatis Gregorij referente, atque imminentis periculi; quod paſſum non fuit, vt illius conualeſcentiam expectaret: Adeoque cum neceſſitate cogente in ſocietate D.Canonici perſpectæ ab ipſa modeſtiæ, vt paritèr conſtat ex alia Epiſtola *Summ. exaduerſo num.*7.*Epiſt.*12.in qua eum caſtum Ioſephum appellat, & ex altera, in qua ipſius verecundiam commendat, excuſanda eſt, ſi neceſſitate cogente hoc remedium elegit, ex vulgato axiomate, quod neceſſitas legem non patitur,de quo *Ancharan.conſ.*191.*num.*4.*&*5.*&conſ.*243.*num.*4.*Cephal conſ.* 451.*num.*283.*Gaill.obſeru.lib.*1.*obſeru.*102 *num.*8.*Ceuall.com. contr.comm.tom.*4.*quæſt.ſin.num.*50.*Bellett.diſquiſ. Cleric.tit.de diſcipl.Cleric.part.*1.§.4. *num* 55. *Tiraquell.de pœn.temp. cauſ.* 33.*num.*3.

Deſumenda propterea non eſt cauſa illicitæ fugæ propter inhoneſtum amorem, quo Franciſca Pompilia D. Canonicum proſequebatur ex eiuſdem Epiſtolis, quia licèt amatoriæ videantur, tamen vtpotè ordinatæ ad alliciendum eumdem D. Canonicum, vt cum ipſa fugam arriperet,quam ſine illo nec exequi, nec tentare poſſe agnoſcebat, nullum præbere valent indicium ſequuti Adulterij, quod licèt reſultet ex literis amatorijs, vt ex auctoritatibus adductis per D. Defenſorem *in* §.*His præhabitis*,tamen illud prorſus eliſum remanet,

ſi ad finem licitum, qualis eſt fuga pro vitando diſcrimine vitæ ſint directæ; Nam tunc ſicuti permiſſus eſt finis, ita licita exiſtimanda ſunt media. quamuis ſuſpicione non carentia, quæ non per ſe, ſed propter finem conſiderantur, vt tradunt, *Gratian. diſcept. for. cap.* 580 *num.* 8. *Gob. conſult.* 119. *numer.* 72. Et adhuc non eſt adeo violenta præſumptio adulterij ex litteris amatorijs deſumpta niſi ſequutæ fornicationis implicitam confeſſionem inuoluant, vt explicando DD. contrarium aſſerentes tradit, *anch. de matrim. lib* 10. *tit. de diuort. diſcurſ.* 12 *quæſt.* 3. *num.* 48. *eoque relato Moller. de Cornut. cap.* 7. *nu.* 24.

Vrgente præſertim ad id ſuadendum conſideratione, quod infelix puella exiſtimabat D. Canonicum modeſte ſecum ſe habiturum in itinere, dum ipſum aliàs de modeſtia, ac caſtitate commendatum obiurgare non deſinit in vna ex Epiſtolis, quod eidem carmina inhoneſta tranſmiſerit *Summ. præſenti num.* 4. ibi -- *E mi meraviglio, che voi, che ſete tanto caſto, hauete compoſto, e copiato coſe tanto poco honeſte* -- & infra ibi -- *ma io non vorrei, che voi faceſte così in ogni coſa, come hauete fatto in queſti libri, che il primo è ſtato tanto honeſto, e queſte ottaue tutte il contrario, che voi da tanto honeſto, che ſete, diuentaſte tanto ardito, il che non credo* - ex qua profecto ſincera obiurgatione conſtat, quo animo conſcriptæ ſint Epiſtolæ, licèt blanditias, & amoris ſignificationes continentes, dum ipſa etiam ab inhoneſtis carminibus ſibi tranſmiſſis abhorrebat. Adeoque ipſæ Epiſtolæ ſecundum intentionem ſcribentis, ſicut verba iuxtà intentionẽ proferentis intelligi debent, *vt ex Text. in cap. Intelligentiæ. & cap. Præterea de verb. ſignific.* monet *Oldrad. conſ* 9. *num.* 3. *Surd. conſ.* 431. *num.* 35. *Molin. de rit. nupt. lib.* 3 *quæſt* 85. *num* 50.

Leuis propterea, & improbabilis exiſtimanda non eſt credulitas, quod in itinere matronalem pudicitiã eruauerit infælix vxor velociſſima fuga propriæ incolumitati conſulere ſatagens, & quod ea non fuerit à D. Canonico tentata, dum amor inter ipſos intercedens vnicè probatur ex dd. Epiſtolis ad fugam ordinatis, & quæ præſeferunt ſollicitudinem modeſtiæ, ac continentiæ, dum pro ſola tranſmiſſione adeo conquæſta fuit, timens ne audax euaderet, vt conſtat ex particula relatæ Epiſtolæ. Nec deſunt exempla ſeruatæ continentiæ in longiori, & commodiori itinere per Amantes ſuſcepto, atque

atque completo, quamuis licitè possent Amoris stimulis indulgere. Vndè inuerisimile non est, intra illius limites se religiosè continuisse miseram vxorem in vitæ discrimine constitutam, quod euadere præcipiti fuga præstolabatur.

Longè debiliores sunt aliæ præsumptiones prætensi Adulterij, ac proinde meritò spretæ in relatione Causæ tam super fuga, quam pro decernendo tormento; Mutuus enim Amor inter ipsam, & D. Canonicum non satis probatus dici potest ex præfatis Epistolis vtpote tendentibus ad præordinandam fugam.

Ingressus, & egressus tempore nocturno in domum Franciscæ, & ab illa respectiuè, probatur per vnicum viliſſimum Testem, nec est ad malum finem præsumendus, dum tendebat ad præparandam fugam; Quoties enim habemus causam expressam licitam, ad quam referri potest, non est tribuendus causæ illicitæ, & criminosæ, *vt per Text. in leg. merito ff. pro soc.* tradit in terminis *Cravett. cons.* 205. *num.* 7. *&* 8.

Ad quam etiam referri debet facilitas se spectandam exhibendi in fenestra ad sibilum diu, noctuque signum præbentem transeuntis prætensi Amasij, quia cum amor simularetur ad illum alliciendum, vt fugæ opem ferret, se socium itineris præbendo, nil magis operari valent istæ Amoris significationes, quàm ipse prætensus Amor, quo tanquam stratagemmate infelix Vxor vsa fuit, vt propriæ incolumitati consuleret; Et ita recurrit responsio, quòd dato licito fine damnanda non sunt media ad illum assequendum ordinata.

Prætensus quoque modus insidiosus, quo fuga fuit præparata, & executioni demandata per somniferum Viro, & Domesticis propinatum, quatenùs probaretur, prout nullo modo fuit in Processu probatus, præberet quidem fugæ indicium, sed non etiam Adulterij, dum hæc non fuit ad illud præordinata, sed ad effugiendum vitæ periculum, cui nimis improuidè se vxor commisisset, nisi iacentem secum in lecto Virum sopore oppressum nacta esset, vel etiam talem commoditatem procurasset.

Zelotipia in aliquibus Epistolis patefacta, est quidem signum Amoris, iuxtà illud Poetæ -- *Res est solicitè plena timoris Amor* -- sed quotiès, vt dictum est, Amor fuit ad licitum finem

nem ſimulatus, potuit etiam ad illum fingendum admiſceri oſtentatio zelotipiæ ad eumdem finem tendens[captandæ beneuolentiæ, vt voti compos euaderet; Ex quo propterea ſimulato Amore, & confictis eius ſignis argui non poteſt, quòd diſceſſus ſimultaneus à domo Viri,& aſſociatio per longum iter prætenſi Adulterij probationem inducat, cum etiam in caſu intercedentis veri reciproci Amoris ſeruata fuerit continentia, quod certè magis difficile eſt.

Ne applicantur adductæ auctoritates per D. Defenſorem in §. *Accedit quod*: Quia *Textus in L. Conſenſu* §. *Vir quoque C. de repud* procedit in muliere abſque iuſta,& probabili cauſa pernoctante extra domum Viri eo inuito, vt conſtat ex verbis eiuſdemquæ diſpoſitio caſu i noſtro non adaptatur, dum miſerima Vxor diſceſſit à domo Viri, & ad Parrios Lares ſe contulit, vt vitæ periculum, quod ſibi imminere timebat, effugeret, & ita dum ex iuſta, & probabili cauſa id egit, præfati Textus cenſura potius retorquetur,& ita etiam ſuam aſſertionem explicat *Farin. in contrarium adductus queſt.* 136. *num.* 182. ibi --*Secus ſi cum cauſa ſubdens, quod ſola pernoctatio non probat ſtuprum, quia poteſt dari caſus, quod Vxor pernoctauerit etiam cum Viris, & tamen Matrimony fidem non læſerit, & optimè Crauett. cit. conſ.* 105. *num.* 11. *verſ.* 2. *principaliter conſidero*, quæ poſſibilitas cum verificetur in caſu quoque noſtro non poteſt ex fuga, & aſſociatione in itinere ad finem conſulendi propriæ indemnitati deſumi præſumptio ſequuti Adulterij.

Mutua deoſculatio in itinere non leuem præberet violatæ pudicitiæ præſumptionem, quatenus probaretur, ſed nimis fluxa eſt probatio reſultans ex dicto vnius viliſſimi Teſtis proſus inueriſimilia deponentis, quod ſcilicet dum Currum volantem vulgò *Caleſſè* citato curſu ducebat, viderit Franciſcam Pompiliam, & Canonicum ſe inuicem deoſculantes; Quam animoſa ſit hęc depoſitio, ex eo conſtat, quod reſpicit factum nocturnum, & quidem momentaneum, & tranſitorium nulla reddita cauſa ſcientiæ, quod Luna luceret, vel aliud artificiale lumen commoditatem præbuerit illud videndi, vt tradunt *Burſat conſ.* 34. *num.* 6. *Farinac. de Teſtib. q.* 66. *num.* 38. *Giurb. conſ. Crim.* 37. *num.* 41. *Polidor. Rip. de noct. temp.*

cap.

cap. 57. *num.* 7. *D. Canonic. Raynal. tom.* 1. *cap.* 11. §. 8. *ad* 13. *num.* 8.

Augeturque inuerisimilitudo, seù potiùs incredibilitas, quod dũ Testis intentus erat ducendo Curriculo cùm eximia velocitate volatum imitante, vt deponit alius Testis potuerit retrospicere, & mutuæ deosculationis actum videre, quæ inuerisimilitudo fidem adimit nedum vni, sed pluribus testibus, vt in celebri Perusina Laudi relata per *Vermigl. conf.* 75. *num.* 4. considerata insuper possibilitate, quod ex velocissimo cursu potuerit contigere collisio manentium in Curriculo, & ex ea crediderit Testis nimis curiosus, quod ipsi se inuicem deoscularentur. cum re vera merè casualis esset approximatio vtriusque capitis, vel faciei non ad impudica oscula libanda præordinata, quoties autem actus trahi potest ad bonum, vel malum sumenda semper est præsumptio mali exclusiua, vt monet *Alex. conf.* 128. *lib.* 4. *Crauett. citata conf.* 205. *num.* 9. *& seqq.* Atque ideò meritò hæc præsumptio ex defectu probationis spreta fuit in dicta relatione Causæ super fuga, quæ cætero quin spernenda non erat.

Nullumque fomentum recipere valet nimis inuerisimilis, & animosa dicti Testis depositio ex prætensis Epistolis, in quibus Franciscæ gratias agit de osculis transmissis, quæ cariora sibi fore profitetur, si verè à Canonico tradita fuissent, & deciès centies millies eidem trasmittit, non enim exindè infertur, quod arrepta commoditate mutua deosculatio contigerit cum ista sint verba officiosa, & captatoria prolata ad finem alliciendi, quæ obligationem non pariunt, vt firmat *Decian. conf.* 55. *num.* 14. *Paris conf.* 89. *num.* 27. *Cern. conf.* 129. *num.* 3. *& seqq. Laderc. conf.* 101. *num.* 1. *&* 2. *Gen. descript. priuat. lib.* 3. *de Epist. num.* 13. *&* 14. eiusque propterea executionis præsumptionem non inducunt, maximè cum eadem Francisca pluries Canonicum monuerit, vt modestiam seruaret, & dum eius sines ipsum transgressum fuisse comperit sibi transmittendo Carmina parùm honesta, eumdem obiurgauit, ne in posterum audax euaderet suum desiderium insinuando, quod longè distat ab impura cupiditate illius oscula recipiendi in dicta Epistola officiosè, & citra intentionem matronalem pudorem temerandi exposita.

Vsus quoque vestium Laicalium, quibus repertus fuit indutus

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Canonicus nullum præbere valet indicium, quia cum non eſſet Sacerdos, vetitus dici non poterat in itinere, fuitque ad bonum finem forſan ordinatus ſe celandi, & auertendi ſcandalum, quod concepi potuiſſet videndo perſonam Eccleſiaſticam cum muliere floridæ ætatis, & vt audiui non ſpernendæ famæ iter facientem abſque alterius fœminæ, vel famuli comitatu, Adeoque non applicatur auctoritas *Matth. Sanſ. de re crimin. cont.* 11. *num.* 31. quia in eius caſu nulla concurrebat cauſa, propter quam Clericus, veſtibus indecentibus, & armis inſtructus incederet, & repertus fuerat à Viro, vel in ipſa turpitudine, vel in præparatoriis ad illam, & illicò interfectus fuerat, quo caſu Adulterij præſumptiones benè admittuntur ad minuendam pœnam, & ad hunc effectum ab eodem Auctore cumulantur.

Condormitio tandem in eodem lecto, vel ſaltem in eodem Cubiculo in Hoſpitio Caſtri noui non fuit in conſideratione habita in dicta relatione Cauſæ ſuper fuga ex defectu probationis negata quippe fuit à Franciſca Pompilia, & ſolum Canonicus ingenuè faſſus eſt, quod parumper quieuit in alio lecto in eodem Cobiculo manente, nec breuis mora in eodem eſt ad delictum trahenda, dum tribui debet cuſtodiæ ſuſceptæ d. Franciſcæ, cui ſocium itineris ſe præbuit, & propterea tenebatur eam cuſtodire, nè aliquid mali ipſi eueniret; Quoties autem actus ex cauſa licita geſtus dici poteſt, ceſſat ſuſpicio mali, vt in præciſis terminis monet *Crauett d. conſ.* 205. *n.* 9. *& ſeqq. vbi num.* 15. *ait* quod ad humaniorem partem ſemper eſt habenda interpetratio, quamuis rigoroſa videatur fortior ſubdens *num.* 20. *&* 21. non ſufficere ad plenam probationem Adulterii, quod quis viſus fuerit ſolus cum ſola & nudus cum nuda, & quod iuuenis fuerit inuentus in cubiculo clauſo cum muliere diſpectoratus, & caligis ſolutis, quia hæc poſſunt eſſe mera præparatoria, quoniès, criminaliter agitur? Adeòque multò minus eius præſumptio inſurgere poteſt ex breui mora in eodem Cubiculo cuſtodiæ cauſa.

Neque probatio Condormitionis in eodem lecto deſumi poteſt ex depoſitione Cubiculerij eiuſdem Hoſpitij aſſerentis vnum tantùm lectum inſtrui ſibi demandatum fuiſſe, non enim exinde

de ſequitur ambos in illo cubaſſe, id autem actum fuit, quia ſola Franciſca parumper quieſcere volebat, vt vires reſi-ret celeritate peracti itineris proſtratas, Canonico ad eius cuſtodiam excubante,& proſecutioni eiuſdem itineris parandæ incumbente, prout de tempore, quo maritus ſuperuenit, id exequebatur præſtolando aptari Curriculum. Atque ideo nulla ex tali depoſitione reſultare valet probatio ondormitionis, eaque meritò per DD. Iudices reiecta fait, vlteriori confutatione non indigeat.

Et quamuis Franciſca Pompilia in ſuo examine occultare affectauerit longiorem moram in dicto Hoſpitio aſſerendo ad illud peruenisſe in Aurora, nullum tamen ex dicto mendacio argui valet indicium prætenſi Adulterij, quia id forſan aſſeruit ad magis auertendam ſuſpicionem violatæ pudicitiæ, quæ potuiſſet ex longiori mora,& maiori commoditate concipi; Vnde cum ſi ea faſſa fuiſſet cum circumſtantiis ſuaſuadentibus, nihil eidem obeſſet confeſſio, ita nec obeſſe valet mendacium, vt tradunt *Marſil. conſilio* 15. *num.* 15. *Bertazzol. conſ.* 59. *num.* 7. *lib.*1. *Vermigliol. conſ.* 45. *num.* 20. *& conſil.* 273. *num.* 7. *Farinac. conſ.* 192. *nu.* 11. *ad med.verſ.* tum etiam *& conſ.* 222. *num.* 14 *& queſt.* 52 *num.* 14. *& ſeqq.*

Ex his cum excluſa, & pænitùs eliſa remaneat probatio prætenſi Adulterij, curandum non eſt, quòd D.Guido in confeſſione qualitatem appoſuerit cauſæ honoris reſpicientis non ſolùm Vxorem, ſed ipſoſmet ſocros, quæ confeſſio ſcindi non poteſt, ſaltem ad effectum irrogandi pænam ordinariam; vltra quòd enim non deſunt magni nominis Doctores etiam ad hoc qualitatem confeſſioni adiectam reijciendam eſſe affirmantes, & præ alijs *Bartol. in L. Aurelius* § *Idem quæſuit ff. de liber cau.*, *quem ſecuti ſunt Bald.* qui pluribus hanc probat concluſionem, & reſpondet contrarijs *in L.* 1. *num.* 44. *& ſeq. Cod. de Confeſſis*, vbi quod Iudex non debet admittere hanc qualificatam confeſſionem *Berou. in cap. At ſi Clerici num.* 73. *de Iudic.* vbi alijs relatis de magis communi teſtatur *Angel. de malef. verb. Comparuerunt d.d. Inquiſiti &c. num. primo*, *Foller. in pract. Crim. verb. & ſi confitebuntur par.* 1. *numer.* 46. *Boſſ. tract. Crim. tit. de confeſſ. num.* 19. vbi quòd in hoc Bartolus eſt communi-

muniter approbatus, *Menoch. de arbitr. caſ. 93. num. 37. vbi de communi, Clar. in pract. §. fin. queſt. 55. verſ.* Poſſet quoque reus, vbi reprobatis contrarijs, hanc dicit magis communem opinionem, & ab ea in iudicando non eſſe recedendum, *Pacian. de probat. lib. primo cap. 25. num. 13. Gutter. queſt. 19. numer. 33. & 34. Spad. conſ. 109. num. 22. lib 1. Conciol. verb. confeſſo reſol. 24. num. primo, & ſeq. Vermigliol. conſil. 238. num. 6. & conſ. 282. num. 11.*

Huiuſmodi honoris cauſa non ſemper prodeſt pro vitanda vltimi ſupplicij pœna, ſed tunc ſolùm, quando vindicta ſumitur incontinenti, vel iuxtà mitiorem opinionem etiam ex interuallo legitimè tamen probato Adulterio per ſententiam condemnatoriam, vel confeſſionem.

Nimis autem laxarentur habenæ priuatæ vindictæ in perniciem Reipublicæ, ſi deficiente probatione Adulterij pro minuenda pœna, ſtandum eſſet qualitati per Reum confeſſioni adiectæ, quia ſic euaderet Teſtis in cauſa propria, quod nemini permiſſum eſt, iuxtà *Text. in L. nullus ff. de Teſtib. & in c. Nullus eodem tit. Rot. Ian. deciſ. 94. num. primo, & in rec. deciſ. 261. num. 3. par. 3. & deciſ. 272. num. 19. par.* 17. & onus probationis eidem incumbens pro effugienda pœna ordinaria impletum remaneret ex ipſa ſola Rei aſſertione, quo nihil abſurdius excogitari poteſt.

Cæterùm non eſt admittenda opinio, quod probato etiam Adulterio liceat Marito vxorem Adulteram ex interuallo interficere abſque incurſu pœnæ Capitalis, cum eam reprobent prauiſſimi Auctores, vt præter adductos in Informatione §. *Cæterùm vſque ad §. Solumque, & in reſponſione §. in Iure videri poſſunt Bartol. in L. 1. §. Cum igitur ff. de vi*, & vi armata, vbi diſtinguendo inter iniuriam realem, & perſonalem firmat, quòd quando Iniuria eſt perſonalis, debet propulſari incontinenti, ſi vero ſit realis, poteſt propulſari ex interuallo, *Gomez. ad leg. Taurt 82. num. 58. §. Item quia verſ. Sed his non obſtantibus* - ibi-- *ego teneo contrariam ſententiam, imò quòd Maritus puniatur pœna ordinaria delicti tanquam Homicida, nec propter hoc aliquo modo excuſetur, quia verè commiſit Homicidium, nec poteſt compenſare delictum, vel offenſam præteritam, niſi in eo caſu, quo occiderit in flagranti Crimine*, &c.

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& ſubſequentibus numeris reſpondet contrarijs fundamentis *Bellon. de ijs, quæ fiunt in continenti cap.65.num.17. Gaill. pract. obſeru.lib.2. obſeru.101.num.5.* vbi poſtquam firmauit, quòd Homicidium cauſa honoris commiſſum ſit licitum ait- *Intellige autem hanc fallentiam procedere ſi incontinenti Iniuria retorqueatur, ſecùs ſi ex interuallo hoc fiat, quò caſu talis retorſio magis ad indictam, quàm honoris defenſam ſpectaret*, & proindè ratione Iniuriarum tenetur. *Boſſ. tit. de Homicid.num.87. Mart.vot.306.num.5,& 6.*

Multoque minùs prætendi valet, quòd vindicta fuerit incontinenti ſumpta, quia Maritus ſtatim, ac potuit, eam fuit executus, ex auctoritatibus adductis per Dominum meum Pauperum Aduocatum §. *A'qua quidem cum ſeq.* vbi oſtendere conatur, quòd cum eſſet inermis, vel impatibus armis, ſcilicèt Enſe tamen viatorio inſtructus, aggredi non potuit vxorem aſſociatam à Canonico viro ſtrenuo, & audaci, ac ſolito in ſimilibus delinquere, & arma ſulphurea geſtante, & qui ſe prõptum obtulerat pro defenſione Amaſiæ mori, addito inſuper, quòd Vxor ſtricto in ipſum gladio irrupit, necem illaturæ, niſi coercita fuiſſet à Birruarijs. Quoniam commoditas occidendi Adulteram non eſt ita ſumenda, vt nex illi valeat inferri cum omni ſecuritate, & abſque vllo diſcrimine, Ab hoc enim omnis abhorret Iuris Cenſura excuſationem præbens prò minuenda pœna, ſi ea ſequatur ex impetu inconſulti doloris, qui Maritum cogit ad negligendum propriæ vitæ periculum, vt illatam ſibi ex Adulterio iniuriam vlciſcatur. Prima itaque commoditas à Doctoribus conſiderata, vt Homicidium dicatur incontinenti patratum, intelligi debet cum primùm ſeſe obtulit occaſio, & in dictam ſumendi, excuſando illius dilationem, vel propter abſentiam, vel propter aliam iuſtam cauſam, vt in caſu, ſuper quo ſcripſit *Matth.Sanſ.contr.* 12. In eo enim Adulterium commiſſum fuerat abſente viro, & vxor aufugerat, itaut priùs ipſe ſe vlciſci non potuerit, vt conſtat ex ſerie facti relata *num.*1. *& num.*28. concluſionem ità ſtatuit. *Itaut excuſentur, præſertim ſi ſtatim, ac peſſinc, vindictam ſumpſerint, cum tunc incontinenti occidiſſe videatur*

Quis autem affirmare valeat, Maritum in caſu noſtro primam occa-

occaſionem ſumpſiſſe, dum reperta vxore in ipſo actu fugæ in Hoſpitio Caſtri Noui abſtinuit à vindicta facti, & ad illam Iuris conuolauit, quam ſemper proſequutus fuit, nimiæque profectò ignauiæ ſe accuſat, aſſerendo, quòd impar eſſet pro ea perficienda ob ferocem Canonici naturam, quia dum ipſe reperiebatur arreſtatus, poterat in Vxorem irruere, nec qualitas armorum ipſum terrere debebat, quia ex deſcriptione facta in Proceſſu appatet, quòd Enſem tantùm geſtabat, adeoquè paribus armis erant inſtructi, nec adeò propriæ incolumitati conſuluiſſe, ſtimulis bonoris reparandi fuiſſet adactus ad vindictam ſumendam cum aliquo etiam illius diſcrimine Iuſtus enim dolor modum neſcit, ſibique imputare debet, ſi ſolus, & imparibus armis vxorem cum Amaſio valido, & meliùs armato vt timere poterat fugientẽ inſecutus fuit, iſteque modus inſequutionis potiùs arguit eius animum fuiſſe conuerſum ad vindictam Iuris pro lucro dotis captando, quàm ad vindictam facti pro reparando honore. Factum enim optimè oſtendit, qualis fuerit animus, vt per *Text in L. 1. §. fin. ff. de dol. tradam Grammat. conſ. 13. num. 2. & 3. & deciſ. 37. num. 6. Maſcard. de probat. lib primo concl. 95. num. 1. & 2. Farinacc. in fragm. Crim. parte prima littera B. verb. Animus numero* 228.

Dilatio pariter vindictæ poſt reditum vxoris ad domum paternam excludit prætenſam qualitatem, quod fuerit incontinenti ſumpta quia prius exequutioni mandari non potuerit nàm iſte contigit die 12. Octobris anni præteriti, & nex eidem illata fuit ſecunda Ianuarij præſentis anni, & potiùs affirmandum eſt expectatum fuiſſe illius partum ſequutum die 18. Decẽbris, vt ſucceſſio ad quam Maritus inhiabat in tuto poneretur dum ſtatim peſſimum conſilium vxorem eiuſque genitores immani excidio perdendi fuit executioni traditum, vt ex combinatione tempotum facile erit dignoſcere exindeque etiam conſtat quo animo illud perpetratum fuerit, & an prò aſſerta reparatione leſi honoris vindicta dici valeat incõtinenti ſuſcepta ideſt cum primum commoditas, & occaſio ſe obtulit iuxtà in contrarium addu&us authoritates.

Electa proindè vindicta Iuris per Carcerationem Vxoris, & prætenſi Amaſij, & proſecutionem cauſæ Criminalis, licitum non fuit

fuit ad vindictam facti regredi, eamque ſumendo dici non poteſt, quòd incontinenti vltionem ſuſceperit, & publicam Iudicij, imò ſupremi Principis Maieſtatem violauit, quæ ſola circumſtantia valdè pœnam exaſperat, & delictum extollit, vt monet *Text. in l. quod ait lex* §. *fin. ff. ad leg. Iul. de Adulter. Angel. de malef. verſ. Che hai adulterato la mia Donna, num.* 21. *in fine* cum alijs relatis in præterita informatione §. *Solumque*.

Abſque eo, quòd applicari valeant concluſiones per D. meum Pauperum Aduocatum adductæ in §. *Et tantùm abeſt cum ſeq.* & auctoritates illas comprobantes, quòd Iniuria non præſumatur à Marito remiſſa, ſed potiùs continuatio animi ſe vlciſcendi proditionis excluſiua, licèt Maritus diſſimulatione vſus fuerit pro vindicta ſumenda; Quia quæſtio in præſentia non eſt ſuper qualitate Homicidij, ex quo illud verè proditorium prætendatur, nec Maritus Iniuriam diſſimulauit, ſed potiùs eam propalauit, conuolando ad vindictam Iuris, quæ licèt forſan ſit minùs honeſta, tamen dum ei placuit, vt Dotem lucraretur, non potuit ſua ſpe fruſtratus, ob non probatum Adulterium, reaſſumere vindictam facti, dilationis excuſationem prætendendo, quòd ſcilicet illam priùs exequi non potuerit, Cum enim dilatio, & impedimentum prouenerit ex facto proprio, non poteſt ex illo præſidium excuſationis captare, iuxtà regulam *Text. in cap. Damnum de regul. Iur. in* 6. *Rot. deciſ.* 345. *numero* 15. *parte* 17. *& deciſione* 609. *numer.* 12. *par.* 18. *rec.*

Sed vtcunque excuſanda eſſet barbara nex miſerrimæ vxori ſub Iudice manenti, viro inſtante, ac illam deferente, illata, certè prorsùs inexcuſabile reputari debet Excidium Petri, & Violantis, quibus licèt adaptare quoque in confeſſione affectauerit cauſam honoris ob prætenſam complicitatem tàm inſuadenda fuga, quàm in aſſerta Vxoris inhoneſtate, nulla tamen huius qualitatis probatio afferri poteſt, nec illius vmbra, vel minima reſultat ex Proceſſu fugæ. Ac prorſus inueriſimilis, imò incredibilis detegitur ex ſola conſideratione, quòd nullatenùs conſenſiſſet D. Abbas Franceſchinus Inquiſitor, & Rei confeſsi Frater eorum cuſtodiæ committi vxorem eiuſdem, ſi ali-

aliquam vel etiam leuiſsimam ſuſpicionem d. complicitati habuiſſet, dum adeò acriter honoris reparationi anhelabat, qui planè conſenſus inſcriptura Italico idiomate prò notitia facti exarata nimis animoſe negatus per D. Pauperum Procuratorem pro ſua eximia ingenuitate admittitur, negando ſolùm, eum ad notitiam Mariti peruẽniſſe, vel ſolam ſcientiam præſumptam eiuſdem à Fiſco prætendi poſſe inferendo

Quæ tamen vltrà, quòd eſt valdè probabilis, & ex violenta præſumptione deducta, cum nimis veriſimile ſit, quòd à Fratre fuerit certior reddirus de Vxoris egreſſu è Monaſterio, eiuſque collocatione in d. domo cum obligatione ſuſcepta per eius Genitores alimenta ſubminiſtrandi, & maximè detecta prægnantia, vt tradunt *Gratian. diſcept. for. cap. 796. numer. 28. Crauett. conſil. 123. num. primo & 2. Rot. deciſ. 341. num 6. parte 11. recent.* In præſenti autem non agitur de ſcientia Mariti probanda, ſed de inferenda ex dicto conſenſu præſumptione exclusiua prætenſæ complicitatis Petri, ac Violantis in Vxoris inhoneſtate nullo modo probata.

Tantumque abeſt vt ea probata dici valeat reſpectu Petri, vt contrarium omninò conſtet ex eius Teſtamento condito de anno 1695. poſt introductam litem ſuper ſuppoſitione Partus, in quo, ea non obſtante primo loco reliquit hæredem vſufructuariam Violantem vxorem, & poſt eius obitum Franciſcam Pompiliam cum onere habitandi in Vrbe, & honeſtè viuendi, vt apparet ex particula dicti Teſtamenti data in præſenti *Summario num.* 5. in quo etiam aſſerit, ipſam honeſtè hactenus ſe geſsiſſe, & ob eius bonos mores legatum relinquere vſus fructus profitetur. Adeoùt prorſus Incredibile detegatur, quòd ipſe viuens conſpirare voluerit in eius inhoneſtatem, à qua mortuus quoque abhorruit, eam in caſu, quo inhoneſtam vitam duceret, relicto vſufructu priuando, & hortando io caſu diſſolutionis Matrimonij ad religioſum habitum aſſumendum, relicto etiam ad hunc effectum pingui legato

Prætenſę verò complicitatis nullam præbere valet præſumptionem conſideratio, quod ſimulata præſentatione epiſtolæ à Domino Canonico tranſmiſſæ ſtatim per Violantem

tem patæfactæ fuerint fores occiſoribus, ex qua facilitate, ac credulitate arguere conantur Domini Defenſores, quod ipſi non eſſet inviſum nomen Amaſij, & ita nec eius conuerſatio cum Franciſca Pompilia. Quoniam cum ipſe fuerit Author liberationis eiuſdem à periculo mortis eam à Domo Viri ad Patrios lares traducendo neglecto proprio diſcrimine mirum videri non debet, quod grati animi ſignificationem pro collato filiæ beneficio conſeruaret, & patefaceret nec exinde inferri valet conſenſus inhoneſtati quà immunis erat præterita correſpondentia, multoque magis de tempore quo ipſe abſens reperiebatur, & in Ciuitate Vetula relegatus.

Vera igitur Cauſa, propter quàm ipſis quoque nex illata fuit, alia eſſe non potuit, quàm odium, quo Maritus exarſerat ob intentatam litem ſuppoſitionis Partus ſpem eludentis pinguem dotem, & ſucceſsionem aſſequendi, & deſiderium vltionis prò ſcripturis promulgatis occaſione d. Litis promouendæ ſuper anguſtia rei familiaris, & peſsimis tractationibus in domo viri receptis, quæ nullatenùs excuſat à pœna præmeditati Excidij, quinimò illam exaſperat, vtpotè ipſum extollens ad Crimen læſæ Maieſtatis, ex nota diſpoſitione Conſtitutionis Alexandrinæ, vt probatum fuit in præterita informatione §. *Accedit ad exaſperandam*.

Pro cuius ſanctionis, & diſpoſitionis Bannimentalis eidem conformis cenſura effugienda, fruſtra recurritur ad excuſationem deſumptam ex ſuperuenta prouocatione, iuxta deciſionem Sac. Rotæ relatam poſt *conſ. 67. Farin.* id quoque admittentis; Ea quippe quatenùs reſultare prætenditur ex conſilio præſtito pro fuga, & complicitate in eadem, vltra quod eius probatio vnicè deſumitur ex aſſerta Epiſtola per Franciſcam Pompiliam ſcripta D. Abbati Franceſchino totiès reiecta, & ab ipſo quoque ſpreta, dum in Proceſſu ſuper fuga fabricato nulla reperitur inſtantia, vt contra Petrum, & Violantem procederetur pro prætenſa inſtigatione, longè præceſſit litem motam ſuper ſuppoſitione Partus, & reſciſſione inſtrumenti dotalis, adeoque prouocationem excluſiuam cauſæ litis parere non valet, quæ vlteriùs debet eſſe vera, & non affectata, & delicto patrato correſpondens, vt firmant *Blanc. de Indic. num. 255. & ſequen. Vulpell. conſ. 99. num. 2. Farinac. quæſt.*

quæſt.52.num.145. & conſ.192.num.2.lib.2.& conſ.221. num. 22.lib.3.Vermigl.conſ.25.num.3. ea verò, quæ deſumi prætenduntur ex complicitate in aſſerta in honeſtate, prorſus excluſa remanet ex defectu probationis tam inhoneſtatis, quàm conniuentiæ, itaut prouocatio ex illa deſumpta detegatur omninò irreleuans, vt potè affectata.

Alja quoque lis intentata nomine Franciſcæ Pompiliæ ſuper ſeparatione Thori, fruſtra euitari prætenditur ob aſſertam nullitatem monitorij, quia exequutum fuerit contra D. *Abbatem* Franceſchinum mandato Procuræ carentem; nam illud erat ampliſſimum ad lites, vt ex eius tenore relato in præſenti *Summ.num.6.* conſtat, & ita inducta lite per monitorium, *vt per Gloſ. in Clemen.2.verb.Plenè, vt lit.penden.firmat. Rota coram Buratt.deciſ.109.num 1.& 5.* verſamur in terminis *Alexandrinæ* Conſtitutionis, & diſpoſitionis Bannimentalis editæ contra offendentes ex cauſa litis; Non releuante reſponſione tradita per D.Procuratorem Pauperum in § *Quæ etiam aptantur*, quod, conſtito de inhoneſtate Vxoris, permittenda non ſit impunitas ab Ira mariti ſuam iniuriam vicifcentis, per introductionem litis ſuper ſeparatione Thori, nec dici valeat Homicidium pro reparatione honoris commiſſum, in odium litis patratum. Quoniam ſupponit, id quod eſt in quæſtione, probatam ſcilicèt Vxoris inhoneſtatem, cuius probatio prorſus deficit, & ad ſummum procedere poſſet, ſi ſtatim patrato adulterio Vxor inſtituerat Iudicium ſuper ſeparatione Thori; ſecùs dum illud intentauit poſt electam à marito viam vindictæ Iuris, criminaliter agendo pro prætenſo adulterio, & pro lucro dotis, & poſtquam eius ſpe fruſtratus remanſit, dum ex Proceſſu nulla reſultant illius indicia, itaut poſſ ex aſperatum viri animum propriæ incolumitati conſulere licitum ei eſſe debebat, remedium ſeparationis Thori implorando, quo Iudicio pendente nex eidem illata pœnis per Alexandrinam, & Bannimentalem ſanctiones inflictis ſit omninò expianda cuius etiam diſpoſitio applicatur dum Vxori nex illata fuit pendente adhuc cauſa Criminali contra ipſam per maritum inſtructa ſuper prætenſo adulterio cum dicta Conſtitutio lites tàm Ciuiles quàm Criminales comprehendat vt conſtat ex eius lectura.

Coa-

Coadunatio pariter Armatorum, eorumque in Vrbem introductio pro ſecurius patrãdo totius Familię excidio delictum extollit ad Læſæ Maieſtatis crimen, & pœnã exaſperandam ſuadet, vt firmatum fuit in præterita, eaq; non cuitatur ex reſponſionibus traditis, leù potiùs repetitis per DD. Defenſores, & præſertim quòd cum delictum principale perpetratum fuerit ex cauſa honoris, ſicuti propter illam locum non habet ordi-ordinaria pœna *legis Cornaliæ de Sicarijs*, ita nec irrogari valeat pœna procoadunatione per Conſtitutiones Apoſtolicas, & generalia Bannimenta inflicta, quia confunditur cum pœna delicti principalis, quod eſt vnicè attendendum, cumanimus, atque propoſitum maleficia diſtinguat, vt firmatur in voto trium Sac. Rotæ Auditorum *Blanchetti, Orani, & Cocini* relato poſt *ſecundum vol. conſ. Farinacc. dec.* 61. Quoniam fruſtranea euaderet diſpoſitio dictæ Conſtitutionis, & Bannimentorum ſi pœna coadunationis ceſſaret, quotiès facta eſſet ad patrandum aliquod delictum mitiori pœna puniendum, Si enim, vt aduertit *Farin. qu.* 113. *nu.* 160. & ex eo repetit *Spad. conſ.* 25. *nu* 39. *lib.* 1., Bulla habet locum etiam, quando conuocantur homines ad arma in caſu licito, & ad bonum finem, quia per illam Summus Pontifex conſulere voluit publicæ ſecuritati, & refrænare audaciã ſibi de facto Iuſdicentium, quanto magis locũ habebit, quotiès coadunatio fit ad malũ finẽ ſcilicet ad delinquendum, quamuis delictum pœnam ordinariã non mereatur, illudq; fuerit ſequutũ, vt arguit *Spad. d. conſ.* 25. *num.* 39. vbi in §. *Et credo*: adducit rationem, quód Pontifex in hac Conſtitutione condenda conſiderauit ſolùm tumultus, & alia mala, quæ ex conuocatione Armatorum contingere ſolent in perniciem publicæ tranquillitatis. Et licèt eius opinio fuerit reprobata per Doctores à D. meo Pauperum Aduocato adductos in §. *non refragante*: confutatio non cadit ſuper coadunatione Armatorum ad malum finem, quamuis non adeò criminoſum, vt pœna mortis imponi valeat, ſed in caſu licito, ſcilicet pro recuperanda incontinenti poſſeſſione vim vi retundendo, in quo etiam caſu diſpoſitioni Bullæ locum eſſe conſuluit Spada, & ideo redargutio non efficit, quo minùs præfatæ Conſtitutionis diſpoſitio ſit caſui noſtro applicabilis, dum coadunatio fuit præordinata ad Excidium integræ familiæ temerario auſu executioni traditum.

Quin

Quin obſtare valeant vota dd. Sac. Rotæ Auditorum requirentium, coadunationem eſſe ordinatam aduersùs Principem, vel Rempublicam, non ex cauſa patrandi aliud delictum, quia ſi dicta qualitas verificaretur, fruſtra edita fuiſſet Conſtitutio illam extollens ad Crimen Læſæ Maieſtatis, & Rebellionis ſatis reſultans ex ipſo facto, & animo turbandi ſtatum Principis, & Reipublicæ, & quatenùs etiam concluſio in illis firmata ſubſiſteret, ea procedere poſſet, inſpecta diſpoſitione Conſtitutionis, non etiam Bannimentali poſtea emanata, quæ ſane inutilis, & fruſtranea euaderet, ſi pœna capitalis per illam impoſita contra Coadunantes homines Armatos ſolùm habere poſſet locum, quando delictum, ad quod patrandum facta fuit Coadunatio, ſit eadem pœna plectendum, & adhuc hac neceſſitate admiſſa non poſſet euitari applicatio Conſtitutionis, dum nulla honoris cauſa pro excuſanda nece Petri, ac Violantis eſt allegabilis, & reſpectu Franciſcæ Pompiliæ nullatenus probata fuit.

Præparatio pariter armorum prohibitorum, eorumque vſus pœna capitali plectendus, inſpecta diſpoſitione Bannimentorum, & Conſtitutionis ſa. mem. Alexandri VIII., ſufficienter non euitatur reſponſione tradita per D.D. Defenſores, quòd confunditur cum delicto principali, adeout ma or pœna nequeat pro illo imponi, quàm ipſum delictum promereatur; Nam vltra quòd tali confuſioni pœnam bannimentalem abſorbenti repugnant ſupra tradita re pectu Coadunationis, & contrarium firmant Doctores adducti in præterita reſponſione §. *Nec delationis*, & in contrarium allati procedere poſſunt quotiès agitur de inſultu, vel homicidio in rixa patrato, vel ad propriam defenſionem, aut ex cauſa honoris incontinenti reparandi, in quibus terminis loquitur *Matth. Sanz. de re Crim. diſt. centron. 11. num. 46.* Ceſſat in caſu noſtro difficultas ex clara diſpoſitione Bannimentorum explicitè declarantium, & iubentium, quòd pœna delationis armorum non confundatur cum pœna delicti cum illis commiſſi, pro qua vitanda non videtur ſufficiens reſponſio tradita per D. Pauperum Procuratorem, quòd cum illa recipiant interpretatione paſſiuam à lure communi, cuius ſanctione inſpecta vnicum delictum conſideratur præparatio, & delatio armorum ad effectum patrandi cum ipſis homicidium, ſecùs ſi arma deferantur

rantur non ad malum finem, & deindè cum illis aliquod delictum committatur; Quoniam nimis aſperum foret, quòd maiorem pœnam pateretur arma deferens non ad malum finem, & deinde cum illis delinquens, quàm eadem præparatus ad delinquendum, & etiam adhunc effectum deferens, itaut nunquam talem interpretationem recipere valeant Bannimenta, quibus, dum vetita fuit delatio armorum vtpotè perniciosa, & occaſionem delinquendi præbens, multò magis prohibita, & rigoroſa pœna plectenda exiſtimari debet delatio ad delinquendum ordinati maxime attenta declaratione, quòd delicta non confundantur.

Supereſt tandem alia qualitas ſummoperè delictum aggrauans, violatio ſcilicet domus aſſignatæ pro Carcere cum conſenſu D. Abbatis Franceſchini. Abſque eo quòd allegari valeat ignorantia huius circumſtantiæ, dum in dicta ſcriptura Italico idiomate exarata pro tradenda ſincera notitia facti aſſeritur, quòd eidem fuit à Fratre relicta, & commiſſa omnimoda ſollicitudo huius Cauſæ, dum ab Vrbe diſceſſit, itaut prorsùs incredibile ſit, quòd non fuerit ab eo de re tam releuanti certior redditus, & quoad diſcrimen inter violationem publici Carceris, & ſimplicis cuſtodiæ in domo ſub fideiuſſoribus, & licitam in eo quoque offenſionem ex cauſa honoris, ſatis fuit in præterita reſponſum §. *Quibus accedit cum ſequent.*, quòd eadem vtriuſq; eſt ratio, cum in vtroque detentus maneat ſub protectione Principis cuius proindè maieſtas læditur, & quòd excuſatio procederet, ſi agatur de propulſanda iniuria in carcere illata, & in his terminis loquuntur authoritates per D.D. Defenſores adductæ, vt conſtare poteſt ex illarum recognitione.

Cum ergo in præſenti tot grauiſſimæ concurrant qualitates delictum extollentes, propter quas D. meus Pauperum Aduocatus pœnã exaſperandam eſſe admittit in §. *Agnoſcit Fiſcus*, & talis exaſperatio non niſi de pœna Capitali verificari poſſit; nam aliàs ſolum Homicidiũ Vxoris ex interuallo patratũ quatenùs etiã probatũ fuiſſet Adulteriũ, quod in caſu noſtro nullatenùs fuit probatum, iuxta mitiorem ſententiã vnicã expoſcere poſſet minorationẽ ſatis aſſerta, & à contrarijs vindicata dici debet Iuſtitia Decreti pro Tormento vigiliæ, itaut accedente

cedente confeſſione pro tanti facinoris expiatione condigna poena inferenda remaneat.

Quare &c.

Io: Baptiſta Bottinius Fiſci, & R.C.A. Aduocatus.

Illuſtriſs. & Reuerendiſs. Dño

Vrbis
GVBERNATORE

In Criminalibus

Romana Homicidiorum cum qualitate.

PRO

Fiſco.

CONTRA

D. Guidum Franceſchinum, & Socios.

Replicatio Iuris D. Aduocati Fiſcalis.

ROMÆ, Typis R. Cam. Apoſt. 1698.

Romana Homicidiorum cum qualitate.

Ill.me Dñe. DEducta per D. meum Pauperum Aduocatum ad defenſam D. Guidonis Franceſchini inquiſiti de tribus homicidijs cum grauiſſimis qualitatibus eadem extollentibus ſuadere non valent, Ipſum non eſſe ordinaria pœna *Legis* Corneliæ de Sicar. plectendum, quatenùs de illis confeſſus reperiretur, & habenda ſuper ijs veritate relicto tormento vigiliæ, ſimplicem torturam eſſe irrogandam, vt ſingulis reſpondendo, quantum maxima temporis anguſtia patitur, Fiſci partes, vt mei muneris ratio poſtulat, & criminis atrocitas, & immanitas expoſcit, tuendo, oſtendere conabor.

Præcipuum itaque Domini mei aſſumptum conſiſtit in parificando caſu vindictæ incontinenti per Maritum ſumptæ cum nece Adulteræ in turpitudine deprehenſæ, ac eũ interuallo captæ, quoties de adulterio Vxor conuicta reperitur, vt verificari prætendit in caſu noſtro, ſed illud tàm in facto, quàm in Iure corruit, et ideò illatio ex eadem paritate deſumpta pro moderatione pœnæ pariter inſubſiſtens detegitur.

In facto ſiquidem prorsùs deficit probatio prætenſi adulterij ex latè deductis in alia mea Informatione, in qua ſingulas eius præſumptiones, ſeù potiùs ſuſpiciones ex Proceſſu, ad quem relatiuè ſe habet D. meus, reſultantes confutaui, oſtendendo, fugam arreptam per vxorem in ſocietate D. Canonici Caponſacchi prætenſi Amaſij ex legitima cauſa, imminens vitæ periculum, quod ipſa timebat, non ex illicito libidinis impulſu proceſſiſſe, quod vtique ſuadere debet participatio, et complicitas in eadem promouenda D. Canonici de Comitibus, et D. Gregorij Guillichini affinium Inquiſiti, quod vtique non præſtitiſſent, ſi malum finem violandæ fidei coniugalis in ipſorum quoque dedecus ceſſiſſet, ſed quia benè agnoſcebant remedij neceſſitatem, illudque periculo vacare, vt deponit Teſtis fiſcalis de auditu à D. Gregorio in eodem Proceſſu ſuper fuga, ei quoque ad executionem perducenda ſuam operam admiſcuerunt.

Non releuante, quod in Decreto condemnationis eiuſdem

D. Canonici ad relegationem in Ciuitate vetula inſcriptus fuerit titulus carnalis cognitionis, quia, vt fuit præuentiuè reſponſum, demandata fuit illius moderatio, et ſubrogatio generalis tituli ad Proceſſum relatiui, et cum ex Proceſſu eius indicia non reſultent, vel ex defenſionibus, quas infelix Vxor cum ſimplici cautione de habendo Domum pro Carcere dimiſſa, facere potuiſſet, niſi adeò immaniter necata fuiſſet, cum d. decretum fuerit emanatum ea non vocata, neque audita, prorsùs eliſa remanſiſſet, inſcriptio facta per Iudicem pœnes acta de titulo delicti eius ream effiecre non valuit, ſed veritas facti ex probationibus reſultans eſt attendenda, vt per *Tex.in l famoſi §. hoc autem crimen ff.ad l.Iul. Maieſt. tradunt Maſtrill. de indult. gener. cap. 29. num. 19. verſ.3. confirmatur Franc. deciſ.330. num.6. ibique Viſcont. in addit. Reuerendiſs.Verulan.ad Statut.Fauentin.lib.4.rubr. 14. num.14.*

Fateor quidem aliqua excuſatione dignum exiſtimandum fore D. Inquiſitum, ſi Vxorem in actu deprehenſionis eiuſdem in fuga cum prætenſo Amaſio necaſſet, cum ad hunc effectum nedum veritas, ſed etiam ſuſpicio patrati adulterij ſufficiat, vt ex *gloſ.in l.Diuus Adrianus in figuratione Caſus ff. ad leg. Pompon. de Paricid.* tradit D. meus, ſed dum neglecto prætenſo Iure priuatæ vindictæ, publicam implorauit, illam arreſtari faciendo, vtique ampliùs non poterat ea manente ſub publica Iudicis poteſtate priuatam vindictam ſumere illam trucidando nil tale timentem, ſuſpicio ſiquidem iuſti doloris excitatiua, quem temperare difficile eſt, excuſat à quanto, ſi non à toto, quotiès ex inconſulto impetu iræ Maritus vltionem incontinenti ſumit, non etiam quando ex interuallo, et cauſa ſub Iudice manente, atque Vxore ad ipſius inſtantiam carcerata id præſtat, vt infrà probabitur, oſtendendo irreleuantiam principalis aſſumpti.

Neque obſtat *Glaſſ.in alleg. Text. in l. Diuus Adrianus*, quia loquitur de filio in flagranti adulterio cum Nouerca per Patrem deprehenſo, et non ex interuallo per Patrem interfecto, vt quamplurimis relatis firmat *Farinacc.conſ.142. n.16.* & longè diuerſa eſt ratio inter Patrem, et Maritum ex interuallo occidentem, quia vt ſubdit ibi *Farinacc. num 17.* Pater habet in filium maximam poteſtatem, et antiquo Iure poterat etiam illum occidere; quam certè non habet Maritus

tus, ac etiam lex faciliùs Patrem excuſat, quia ſemper præſumitur, quod capiat bonum conſilium pro filio ex inſtinctu Paterni amoris, quam confidentiam non habet de Viro, qui facilior eſſe ſolet ad concipiendam iniuſtam ſuſpicionem de Vxore, atque ideò permittendum non eſt, quod ſola ſuſpicione poſſit illam ex interuallo necare, nec eſt ob eam nullo modo excuſandus, vt conſiderata ratione adducta per *Tex. in l. nec in ea ff. ad leg. Iul. de Adulter.* — *quia pietas Paterni amoris plerumque Conſilium pro liberis capit, Mariti verò calor, & impetus facilè ſæuientis fuit refrenandus* — tradunt *Couarr. in tit. de Sponſal. & matrim. 2. par. §. 7. num. 2. verſ. licuit, Decian. tract. crimin. cap. 15. num. 38. in fin, Caball. reſol. crimin. caſ. 300. num 21.*

Quod adeo verum eſt, vt non aliàs Pater excuſetur niſi vna cum adultero ipſa filia occidatur, vel læthaliter vulneretur; vt fato potiùs, quam paternæ indulgentiæ mortem effugiſſe, tribuendum ſit, idque non aliâ ratione per Legislatores inductum eſt, niſi quia talis dolor ad iram inconſultam prouocans ad excuſandum Patrem requiritur vt propriæ filiæ non parcat, quod cum Statutum non legatur per leges de Marito loquentes, manifeſta detegitur diſparitas inter vtrumque ob nimiam facilitatem ſuſpicionem concipiendi, & contrà Vxorem inſæuiendi.

Sòlamque ſuſpicionem non ſufficere ad hoc vt minuatur pœna Marito ex interuallo Vxorem occidenti conſtat ex ipſis authoritatibus illum in tali caſu excuſantibus, quatenus adulterium ſit probatum, vel per confeſſiones Vxoris, vel alijs probationibus, ſtaut de illo conuicta dici valeat, vt tradunt *Maſcard. de probat. concl. 64. num. 8. & 9. Bertazz. conſ. crim. 42. num. 10. Caball. reſol. crim. d caſ. 300. num. 26.* ibi — *Vidi in contingentia facti obſeruari, & excuſari maritum qui Vxorem interfecerat adulteram, non tamen in actibus venereis repertam, ſed talem verè, & realiter exiſtentem, & hoc aperiſſimè probato* - Vnde manifeſtum redditur ex ipſis authoritatibus per D. meum adductis, non excuſari Maritum ex interuallo Vxorem occidentem ex ſola ſuſpicione, ex Cauſa ſuper adulterio adhuc ſub Iudice, quem ipſe adiuerat, manente.

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In Iure quoque insubsistens detegitur assumptum parificans vindictam sumptam incontinenti, in actu scilicet deprehensionis in adulterio, vel in præparatorijs proximis legitimam suspicionem eiusdem inducentibus, & ex interuallo, quotiès de illo constat, & eo quidem probationum genere, quod adulterium apertissimum reddat. Licèt enim non desint quamplures Doctores pœnam minuendam suadentes ex adducta per ipsos ratione, quod Causa honoris semper vrget, & ad vindictam prouocat, & quod satis dicitur in adulterio deprehensa Mulier de illo confessa, vel conuicta, plena manu congesti per D.meum, & quorum aliquo mox ipse indicaui; Tamen contraria opinio est verior, & in praxi recepta, de qua testantur insignes practici nostri temporis, & in re criminali Peritissimi, scilicet *Farinacc.dict.conf.in fin.*, vbi concludit se ita indubitanter de iure credere, consulens ita tenendum esse nisi errare velimus, diserte priùs respondendo rationibus, & authoritatibus in contrarium adductis, & D. Canon. Rainald. qui etiam Procuratoris Pauperum munus summa cum laude expleuit, & ideò credi potest quod ad pietatem, & commiserationē fuerit summoperè procliuis, & ex solo veritatis sectandæ studio huic opinioni adhæserit, quam veriorem appellat, & magis Reipublicæ proficuam, nec ab ea in iudicando recedendum esse, vt tradit *in suis obseruat.crimin.cap.2.§.4.num.155. & cap.7. in rubr.num.118. & seqq.*

Sed quatenus etiam conflictus authoritatum posset aliquo modo Inquisito suffragare pro minuenda pœna, si solus excessus in tempore concurreret, prorsùs tamen in excusabilis existimandus est, itaut non valeat pœnam ordinariam effugere, dum tot qualitates delictum extollentes concurrunt, quarum vnaquæque de per se pœna mortis plectenda esset.

In primis quippe considerari ad hunc effectum meretur coadunatio Armatorum pernicioſissimum publicæ quieti delictum conuenticulæ constituens, in Bannimentis cap.82. damnatum pœna vltimi supplicij respectu authoris cum declaratione, quod sufficiat quatuor Armatos fuisse congregatos ad illam constituendam, quæ priùs fuerat sub eadem

eadem pœna prohibita per *Conſtit.* 75. fæl. rec. Sixti V. cã extollendo ad crimen rebellionis, ex quacumque cauſa fieret, vt latè probat *Spad.conſ.* 25. *per tot. lib. primo*, aſſerens illam eſſe generalitèr intelligendam in omnibus caſibus, in quibus prohibita coadunatio fieret.

Pro quo effugiendo, vel capitali pœna euadenda, non releuat excuſatio, quod licitum ſit Marito etiam coadunatis Armatis adulteram Vxorem occidere. Quidquid enim ſit quotiès Maritus vult occidere Vxorem in Adulterio depræhenſam, quia timere poteſt, quod Adulter armatus ei reſiſtere valeat, & forſan habeat in ſui auxilium famulos; quo caſu cum aliter vindictam exequi non valeat, quam auxiliatores conuocando, vt monet *Caball. dict. caſ.* 300. *num.* 58. & 59. vtiquein caſu vindictæ ſumptæ ex interuallo, manente Vxore ſub poteſtate Iudicis, & vigente ſola ſuſpicione adulterij, permiſſa nullatenùs dici poteſt conuocatio armatorumcum Conſtit. fæl. rec. Sixti V. inter ipſius impreſſas 75. talem coadunationem prohibeat etiam in caſu licito, vtpotè publicæ quietis turbatiuam, vt diſſertè probat *Spad. conſ.* 25. *per tot. lib.* 1. Adeoque multo magis prohibita, & pœna ordinaria tam d. Conſtitutionis, quam diſpoſitionis Bannimentalis expianda, dum ad finem illicitum, atque damnatum facta fuit, ſcilicèt occidendi Vxorem, & cum ea Socerum, & Soceram, quod manifeſtum redditur ex aſſertione Doctorum excuſantium à pœna ordinaria Maritum ex interuallo ſe vlciſcentem; & ſane nimis ampla ſtrueretur via priuatæ vindictæ legibus exoſæ, ſi poſtquam Maritus elegit viam vindictæ Iuris, & neglexit prætenſam iniuriam vlciſci in actu depræhenſionis Vxoris in fuga cum prætenſo Amaſio, excuſandus eſſet illam coadunatis Armatis cum omni ſecuritate ex interuallo ſumendo, incautam occidendo ſub poteſtate Iudicis manentem abſque vllo proprio periculo.

Abſque eo quod ſuffragari poſſit reſponſio, quod in tantum neglexit priuatam vindictam ſumere, quia erat inermis, & Vxor reperiebatur in Societate D. Canonici Viri audacis. & validi; Quoniam ſibi imputare debet Maritus ſi Vxorem cum Amaſio fugientẽ ſolus, & inermis fuit perſequutus; Tunc enim poterat meliori iure Socios aſſumere, &

armatus eam perſequi, & in tali caſu coadunatio forſan eſſet aliquo modo excuſabilis, non etiam ad ſumendam ex interuallo adeo immanem vindictam; Quinimò conſiderata ratione, propter quam Maritus adulterum, vel Vxorem occidens mitiori pœna punitur iuxta qualitatem perſonarum, ſi vltrò in ipſo actu ſequatur, ſcilicet inconſulti doloris, qui temperari non valeat, illicita detegitur coadunatio armatorum ad id ex interuallo præſtandum, quia inconſultus dolor efficit, vt ipſe exponat diſcrimini reſiſtentiæ per Adulterum faciendæ, qui non ſolet inermis accedere, ratione cuius periculi pœna minuitur, cum illud oſtendat Maritum incautè ſe illi expoſuiſſe ex impetu doloris illum excecante, quod verificatur in vendicta ex interuallo cum omnimoda præmeditatione ſumpta coadunatis Armatis, vt nihil mali maritus timere poſſet ſibi euenturum ex illius executione, quæ præparatio nimis repugnat inconſulto dolori, qui temperari non valeat, à quo deſumitur excuſatio, vt ponderando verba Textuum in contrarium adductorum reſpondet *Farin.d.conſ.* 141.*num* 9. *& ſeq.*

Secunda qualitas delictum extollens reſultat ex genere armorum, quibus homicidia patrata fuerunt, cum ſint prohibita in nota Conſtitutione ſan. me. Alexandri VIII. nedum quoad delationem, ſed etiam quoad retentionem, introductionem, & fabricationem ex quacumque Cauſa etiam ſub prætextu militiæ, & executionis Iuſtitiæ, adeoque multò magis ad effectum adeò impiam, & immanem vindictam ſumendi, perdendo integram familiam.

Nec delationis armorum delictum in tali caſu confunditur cum principali crimine homicidij, quia cum maior pœna ſit pro illa impoſita, quatenùs ſubſiſteret excuſatio deſumpta ex cauſa honoris, punienda venit delatio armorum prohibitorum ordinaria pœna, vt tradunt *Giurb. conſ.* 26.*num.* 1. *& conſ.* 81.*num.* 41. *Caball.caſ.* 100.*nu.* 13. *Farin.quæſt.* 22. *n.* 22. *& quæſt.* 108.*num.* 166. *Sanfelic.dec.* 43. *num.* 2. *&* 3. Non attentis authoritatibus in contrarium adductis, quia procedunt in terminis homicidij facti ad defenſionem, vel prouocatione in rixa, vt declarat *Policard. de præhemin. Reg. Aud. tom.* 2.*cap.* 6.*num.* 11. *&* 12. Eęque vlterius non applicantur, quia non loquuntur in terminis Conſtitutionis adeo diſtri-

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dè prohibentis tale genus armorum, nam d. Policardus loquitur de Reg. Pragm. præsumente ex qualitate armorum qualitatem delicti proditorij, cuius dispositionem cessare asserit in homicidio ad defensam, vel ad prouocationem in rixa cum distis armis patrato, quæ dispositio toto cælo distat à nostræ Constitutionis Sanctione, quia edita fuit ad omninò exterminandum adeò pernicioſum genus armorum.

Tertia qualitas pariter delictum extollens est homicium patratum ex causa litis, quod ex tota Constitutione fel. rec. Alex. VII. elatum fuit ad crimen rebellionis, & læsæ maiestatis vltimo supplicio, & bonorum confiscatione plectendum, què qualitas respectu necis Petri Comparini, & Violantis eius Vxoris controuerti nequit ex eo, quod Inquisitus in lite victoriam reportasset, adeoque dici debeat patrata ob iustum dolorem iniuriæ ipsi illatæ per suppositionem Partus detectam post celebratum matrimonium, vt dotale Instrumentum infringerent, & per publicationem scripturarum magnam detractionem continentium, ac per conspirationem in fuga Vxoris in perniciem honoris Inquisiti, & totius familiæ, quæ causa vlciscendi iniuriam cum sit grauior, quam causa litis potius illi tribuendum sit homicidium, tanquam isti magis proportionatæ. Quoniam victoria obtenta respiciebat solum possessorium lite adhuc in petitorio manente, quam Parentes prosequti fuissent, adeoque illius causa adhuc durabat, & extincta dici non poterat; Iniuria verò ex qua diuersa causa desumi prætenditur prouenit ex eadem lite, tam circà detectam suppositionem Partus, quam circa detractiones in scripturis contentas respicentes angustiam rei familiaris contra iactatas diuitias, sub quarum spe contractum fuerat matrimonium, & pessimas tractiones, quas experti fuerunt Parentes Sponsæ in Domo Inquisiti, quibus ex conuentione dotali subministranda erant alimenta, cum aliàs de conspiratione in fuga, minusque de complicitate in prætenso adulterio vlla probatio habeatur. Adeoque semper vrgebat causa odij ex lite concepti, quæ non eximit à pena per Alexandrinam Constitutionem infligta ex quo lis iniuriosa fuerit Inquisito, vel in substantia, vel circa modum, quia hæc arguit quidem Causam, quæ in homici-

micidijs præmeditatis ſemper requiritur, non autem qualitatem litis excludit, imò eam confirmat, dum explicitè ortam fuiſſe iniuſtitiam ſupponitur, alias permitteretur aditus vindictam priuatam ſumendi, quod omni iure vetitum eſt, & præſertim intercedente lite, quia tunc læditur Maieſtas Principis, vt probatum fuit in alia informatione §. *Accedet ad exaſperandam.*

Quarta, & quidem grauiſſima qualitas deſumitur ex circumſtantia loci, in quo patratum fuit delictum, ſcilicet in domo propria eorum, quibus mors illata fuit, & quidem modo inſidioſo, confingendo conſignationem Epiſtolæ à D. Canonico Caponſaccho tranſmiſſæ. Domus enim propria tutiſſimum cuili et refugium eſſe debet, vt in alia probatum fuit §. *Plurimum quoque*. Qui ſanè modus proditionem ſapit, quæ verificatur nedum patrato homicidio ſub ſpecie amicitiæ, ſed etiam quoties ceſſat in Occiſo præcauendi potentia vel obligatio, vt tradunt *Bart. in l. reſpiciendum §. Delinquunt ff. de pæn. Matth. Sanz. de re crimin. controu. 30. num. 57. Crauett. in Anathom. necis prodit §. 10. num. 5.* quæ procul dubio deficiebat in caſu noſtro, cum miſeri Parentes nil tale timere poſſent ab inquiſito in Patria commorante.

Quibus accedit quinta grauiſſima qualitas pariter deſumpta ex circumſtantia loci reſpectu miſerrimæ Vxoris, quæ fuerat ad inſtantiam Inquiſiti Carcerata, & cum conſenſu D. Abbatis eius fratris detenta in domo Parentum loco Carceris, & ità manebat, ſub ſæcuritate publica, quam Inquiſito violare nefas erat abſque incurſu pœnæ læſæ Maieſtatis, vt monent *Iodoc. in prax. crim cap. 18. num. 2. Bonifat. Vital. de Maleſic. rubr. de carcer. priuat. num. 8. Matth. Sanz. contr. 17. num. 12. & ſeqq.*

Iſpoteſt ex duplici reſponſione per D. meum tradita: Prima quod agatur de carcere improprio; ſecunda quod ex iuſta cauſa honoris excuſetur offendere, vel occidens etiam in carcere. Neutra ſiquidem qualitatem excludit, nam improprietas Carceris forſan eſſet conſiderabilis ſi ageretur de violatione illius facta per Carceratum, & ità de vitando eius præiudicio, ſecùs dum agitur de illius fauore ad vindicandam iniuriam eidem in domo

aque grauiſſima qualitas delictum extollens euitari non

loco

loco Carceris assignata illatam, causa verò honoris solùm prodesse posset, si ad illum defendendum in ipso impetu inconsulti doloris requeretur offensio in Carcere, in quibus terminis procedere possunt authoritates per D. meum adductæ, non etiam ad excusandam vindictam ex interuallo sumptam contra Carceratam, & quidem ad instantiam Occisoris, tunc enim qualitas loci summoperè aggrauat delictum, vt potè lædens publicam securitatem, & inuoluens proditionem, vt in similibus terminis tradit *Matth. Sanz. de re crimin contr. 33. num. 14. 15. & 16. Caball. cas. 13. num. 10. Carpzou. part 1. in prax. qu. 40 num. 11. cum seqq. Quintilian. declam 274. num. 1. & seqq.*

Ex his cum abundè constet homicidia per Inquisitum patrata habere admixtas tot qualitates illa extollentes, quatenus etiam pręponderaret opinio suadens minuendam esse pœnam Occidenti Adulteram ex interuallo, & probatum dici posset adulterium prætensum eo modo, qui ad talem minorationem obtinendam requiritur ab omnibus mitioris opinionis Sectatoribus, adhuc eadem propter dd. qualitates exasperanda esset, & ordinaria pœna *legis Cornelia de Sicar.* omninò irroganda. Ac propterea superfluum videtur agere de qualitate tormenti, cum ex notis facultatibus Illustrissimo D. Gubernatori concessis, concurrentibus vrgentissimis indicijs, de quibus, vt audio, non dubitatur, sufficiat delictum ordinaria pœna plectendum fore, licet qualitas atrocissimi non concurrat, itaut pro eo non sit exasperanda pęna.

Cæterum nec etiam huiusmodi qualitas deficit, vt potè resultans ex modo proditorio, & ex titulo læsæ Maiestatis ex triplici Capite in casu nostro verificabili, scilicet offensione ex causa litis. coadunatione Armatorum, & violatione publicæ securitatis propter assignationem domus pro carcere; Cum enim per Constitutiones Apostolicas super primo, & secundo ad talem speciem delictum elatum sit, & de potestate Principis id faciendi non sit ambigendum, vt monent *Restaur. Castald. de Imperat. qu. 110. cas. 291.* & de similibus Constitutionibus *Spad. consil. 1. num. 34.* asserens in tali casu illud quoad omnes Iuris effectus tale reputari non est incontrouersiam reuocanda qualitas atrocissimi tali delicto conueniens, vt in præcisis termi-

mis pro irrogando termeoto Vigiliæ tradit *Spad. conſ.* 114. *num.* 14. *&* 15. *lib.* 1.

Qualitas verò perſonæ noo permittens pęnam mortis exaſperari, vt in criminibus atrociſſimis contingere ſolet ob nobilitatem, non denigrandam ex tali exaſperatione infamiam irrogante, quatenus etiam verificaretur, non obſtaret, quo minus ad vigiliæ tormentum inferendum deueniri poſſet, cum ad hunc effectum ſola criminis ratio habeatur non attenta qualitate perſonæ pęnę infamiam inferentis exequutionem impediente, alias Nobiles nunquam exponi poſſent tormento vigiliæ, nec Sacerdotes, & Religioſi, quibus infamiæ pœna non infligitur. Nobilitas autem nullum priuilegium tribuit in genere tormentorum præſertim in criminibus atrociſſimis, vt monet *Garz. de Nobilit. gloſſ.* 1. *n.* 17. & de conſuetudine teſtatur *Farinacc. quæſt.* 41. *num.* 76. *& ſeqq.*

Quare &c.

Io: Baptiſta Bottinius
Fiſci, & Cameræ Apoſtolicæ Adu.

Illuſtriſ. & Reuerendiſs. Domino

GVBERNATORE

In Criminalibus.

Romana Homicidiorum
cum qualitate,

P R O

Fiſco.

C O N T R A

D. Guidonem Franciſchinum,
& alios.

Reſponſio D. Aduocati Fiſcalis.

Romæ, Typis Reu. Cam. Apoſt. 1698.

RISPOSTA

Alle notizie di fatto, e di ragioni nella Cauſa Franceſchini.

Adde la belliſſima Statua di Nabucdonoſor perche *pedibus non regebatur*, così à punto precipitarono li figurati eſtorti ſuppoſti co'quali lo ſcrittore anonimo in fogli impreſſi cerca d'inſinuare nel rozzo intelletto del volgo l'origine dell'eſſecrando eccidio commeſſo dentro Roma di trè miſeri innocenti da Guido Franceſchini aſsiſtito da quattro huomini armati d'armi prohibite à tal'effetto con denari condotti, & à ſue ſpeſe per più giorni mantenuti con preparate inſidie prouenire dal giuſto dolore concepito, allora che ſi vidde per otto meſi auanti mancarſi nella propria Caſa in Arezzo Franceſca Pompilia ſua Moglie, e fuggita in Compagnia del Canonico Caponſacchi dal medemo luogo per ricouerarſi in Roma ſotto il patrocinio di Pietro, e Violante coniugi de Comparini, che come figlia l'haueuano alleuata, e dal ſoſpetto creſciutogli, che nel viaggio precipitoſo haueſſe con eſso rotte le leggi maritali per eſſergliſi trouate appreſſo alcune lettere amoroſe, dalle quali ne deduceua irragioneuolmente l'adulterio di quella, e con preſuppore, che come adultero nè foſſe detto Caponſacchi condannato alla relegazione di trè anni in Ciuità Vecchia; per potere con queſto maſcherato titolo d'onore render men graue il delitto, e d'eccitare la compaſsione non meno nelle perſone idiote, che nell'animo de Religioſiſſimi Giudici per diſporli ad vna pena piu mite, e non corriſpondente ſecondo la legge alla qualità, forme, e circoſtanze del delitto, e queſto in ſoſtanza, è tuttociò che ſi pretende dall'autore de fogli ſtampati intitolati notizie di fatto, e di ragioni nella Cauſa Franceſchini, mà però troppo mancheuoli nel racconto della tragica Iſtoria, che hà diuerſo principio, e cagione indepenndente dal colorito titolo d'onore, che in eſſi vien troppo animoſamente

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ſuppoſto eſſerli ſtato tolto dalla Moglie, mentre queſta hà sẽpre intatta conſeruata la ſua pudicizia, e ben cuſtodite le leggi dell'oneſtà coniugale, come euidentemente ſi moſtra in appreſſo.

Che la doloroſa Cataſtroſe dell'eccidio di queſta intiera Famiglia non ſia proceduta come l'Anonimo Scrittore diuulga nelle ſue ſtampe dalla figurata cauſa d'onore, mà da vn dannato intereſſe ben può dimoſtrarſi col rifleſſo, che à queſt'oggetto s'introduſſe dal Franceſchino l'infauſto trattato de Sponſali, con detta Franceſca Pompilia, accertatoſi, che doppo la morte de ſuoi Creduti Genitori gli douеſſe reſtare vn'molto conſiderabile valſente, e più toſto deue crederſi commeſſa in odio di tre liti pendenti cioè due Ciuili vna ſopra la figliolanza legitima di ſua Moglie, e nullità di coſtituzione di Dote, nel Tribunale della Sacra Rota introdotta da Pietro, l'altra ſopra la ſeparazione del Toro auanti Monſignor Vicè Gerente introdotta da detta Franceſca Pompilia, e la terza Criminale in deciſa pendente nel Tribunale di Monſignor Illuſtriſſimo Gouernatore in ordine al preteſo adulterio moſſa coll'iſteſſo ſtimolo dell'intereſſe per guadagnare l'intiera dote, quando quello foſſe ſtato concludentemente prouato in eſſo introdotta da detto Franceſchini, la qual ſperanza eſſendo rimaſta deluſa per mancanza delle proue, che fariano del tutto ſuanite colle difeſe, che poteuano farſi dalla Moglie proruppe in vn eccеſſo così tragico, e deplorabile, che ben ſcoperſe le frodi, e l'ingãni adoprati per far ſortire il detto matrimonio e che ciò ſia il vero eccone pronte le dimoſtrazioni,

Se ne ſtaua ozioſo in Roma Guido Franceſchini fuori del ſeruizio di vn porporato, col ſoldo dal quale ſomminiſtratoli fino allora ſi era mantenuto, & il ſuo più frequente mantenimento era in vna Bottega di alcune Donne Perucchiere, doue più volte fattoſi intendere eſſere la ſua intentione d'accaſsarſi con qualche buona dote vantando le grandezze della ſua Patria, de ſuoi natali, e delle ſue ſoſtanze diſpoſe la medeſima con promeſſe à proccaciarne l'occaſione, e ſcoperto di eſſerui queſta di detta Franceſca Pompilia allora ſtimata figlia legitima, e naturale di Pietro, e Violante Coniugi de Comparini ſe ne accinſe eſſo medeſimo coll'aiuto dell'Abbate Paolo ſuo Fratello all'impreſa, & vſando l'aſtuta prudenza, della quale ſi ſeruì il maligno Serpente allorche nel

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Paradiſo Terreſtre per ſoruertire Adamo à traſgredire il Precetto, e mangiare del Pomo vietato facendo li ſuoi conti, ſe io vò direttamente ad aſsaltare l'Vomo, egli come aſsai forte, aſsai riſoluto mi verrà a dar di ſicuro la ripulſa, meglio dunque è, che io tenti prima la Donna, che è di natura mobile, e di cuore molle, e però diede il primo aſsalto ad Eua, perche poi guadagnata, che haueſse quella per mezzo di eſsa li ſarebbe ſtato più facile l'acquiſto di Adamo: *primum enim animum ſexus mollioris aggreſſus eſt*, ſono parole ingegnoſe di S. Ilario.

Così à punto diuiſo il detto Guido coll'intelligenza dell'Abbate Paolo ſuo fratello, e così à punto gli riuſcì, mentre tralaſciando di diſcorrere di detto Matrimonio cõ Pietro, dal quale probabilmente haueua hauuta la negatiua, volle prima tentare Violante ſua moglie, perche coll'acquiſto di eſsa haurebbe poi con più facilità ſouuertito il Marito à preſtarui il conſenſo, ne gli fù difficile ſorprendere la Donna, peroche ſeppe così bene imprimergli nell'animo le grandezze della ſua Patria, la nobiltà primaria de ſuoi natali, e le groſse rendite de ſuoi beni patrimoniali ſino alla ſomma di ſcudi 1700., con laſciargliene nota ſcritta di proprio pugno; che eſsa ne reſtò incantata, e ſenza prendere altra informazione ſi poſe à ſconuolgere il Marito con ricauarne da lui il conſenſo, auuerando quello ſi legge ſcritto ne Prouerbij, *mulier Viri preticſam animam capite*, quando ſi diſse di Mardoccheo, che ſi valeſse d'Eſter, quando egli volle placare lo ſdegno d'Aſsuero con il Popolo, e di Giabbe, che ſi ſeruiſse della Tecuite, quando egli volle addolcire l'ira di Dauidde col figliolo, e de Filiſtei della Tannateſe, quando eſſi vollero ricauare da Sanſone lo ſcioglimento del problema da lui propoſto nel Conuito nuzziale.

La credula, ma ingannata Donna tanto adoproſſi col marito, che in fine lo riduſſe à ſottoſcriuere li capitoli matrimoniali con la coſtitutione della dote di luoghi 26. di monti, & alla morte di detti Coniugi Comparini di tutto il loro hauere aſcendente, come confeſſa l'anonimo Scrittore, ſino alla ſomma di ſc. 12. mila, e per renderſi li dd. Franceſchini Padroni ancora in loro vita di detto valſente ſi fecero cedere l'vſufrutto d'eſſo conſiſtente tutto in corpi frutti feri di caſe poſte in ottimo ſito, & in luoghi di monti, col peſo però di co-

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durre detti Coniugi Comparini alla Città d'Arezzo, & iui alimentarli, vestirli. e souuenirli di seruitio in ciò che fusse stato loro dibisogno, la qual promessa non era disgiunta dalla speranza, che con disgusti, e patimenti, che saria loro conuenuto di soffrire restasse accelerata la morte, & esso diuenisse Padrone assoluto del loro hauere.

E quantunque Pietro doppo sottoscritti li detti Capitoli, fortemente ricusasse di venire all'effettuatione del matrimonio di detta Francesca Pompilia con il sudetto Guido, di cui poche buone relationi haueua haute assai differenti dalle presupposte ricchezze, e dalle vantate qualità riguardeuoli, onde si poteua ben dire di lui ciò, che concluse Persio nella 4. Satira, *Respice quod non est tollat sua munera Cerdo, Tecum habita, & noris quàm sit tibi curta supellex.*

Ad ogni modo il sudetto Guido vnitosi con detta Violante imbeuta delle sue lusinghe, e carezze, sprezzando ogn'altro consenso di Pietro di nascosto del medemo, e senza sua saputa contrasse il Matrimonio in faciem Ecclesiæ con detta Francesca Pompilia, scoprendo sempre più con detto atto poco riuerente verso il Promissore della dote la sua auidità non solo à quella quantità, che gl'era stata assegnata in dd. Capitoli, ma anco al resto de beni, che Pietro possedeua, tenendo per certo, che doppo la di lui morte necessariamente douessero per fidei commisso d'Antenati colare in detta Francesca Pompilia, già fatta sua Sposa.

Risaputosi doppo qualche giorno da Pietro lo Sposaltio seguito ancorche vigorosamente riprouasse l'operato; tuttauia, perche *factum infectum fieri non potest* per le lusinghe di Violante sua Moglie, e per l'interpositione d'altro Porporato, al quale seruiua l'Abbate Fratello di Guido. fù il pouero Vecchio costretto à beuere il Calice delle sue amarezze venendo quasi forzatamente dopo molti Mesi alla stipulatione dell' Instromento Dotale, & in vn subito cominciò à prouare gl'effetti dell'inganno del Francescbini, mentre ne anco per fare le prime spese dello Sposalitio haueua vn'soldo del proprio, in modo, che per supplire alle medeme, fù di mestiere contro la voglia di Pietro liberare dal vincolo del fideicommisso cinque luoghi, e più di Monti, con mandato del Signor Auditore di Monsignor Illustris. Gouernatore, e venderli per com-

compire alle medeme, onde chiaramente si vede, che il primario oggetto, che si è hauuto dal Franceschini sù questa prattica è stato d'ingannar, tanto Pietro, come Violante sua Moglie, e la Pouera Figlia per farsi ricco con la robba altrui.

Ne può più negarsi la fraudolenta suppositione delle vantate ricchezze del Franceschini con detta nota di sua mano scritta, e consegnata al Comparini, perche oltre che lo confessa apertamente lo scrittore anonimo, mentre per saluare la complicità nell' inganno anco dell' Abbate Paolo, figura, che questo riprendesse aspramente Guido suo frate lo dell' alteratione di detta nota, ben presto la sperimentarono detti Coniugi Comparini, all'hor che trasferitisi alla Città d' Arezzo, ritrouarono esser molto angusto l'hauere della Casa Franceschini, e furono tali le miserie, che conuenne loro soffrire, e li strapazzi si nel vitto, come nell'aspre pocedure con essi vsate, e constringerli anco con serrarli fuori di Casa, ricourarsi nell' Osteria per albergo, con oggetto d'abbreuiare loro la vita, ò per li patimenti, ò per la rabbia da essi cagionata, che furono costretti doppo pochi mesi à ritornare in Roma, e più euidentemente resta prouato dalle fedi de Catastri estratte da publici libri della Città d' Arezzo, dalle quali risulta, che detto Guido non possiede nè pure vn'soldo de beni stabili espressi in detta nota, come pure non esser vero goder esso, e la sua famiglia il primario ordine della nobiltà della sua Patria, atteso, che da altre Partite estratte da publici libri di detta Città, si vede, che la sua famiglia è riposta nel secondo ordine.

Le sudette forme dolose, e fraudolenti di trattare, poste in luce molto prima, che seguisse l'eccidio, e publicate in questa Corte, & in Arezzo, possono ben dirsi esser stata l'origine della premeditata strage con modi così detestabili, com' è notorio, e non il colorato titolo d'onore; mentre dette loro frodi, come sopra diuolgate, operarono nel commun' concetto d'esser non meno l'Abbate Paolo, che il detto Guido suo fratello, stimati per huomini di raggiro, e d'inganno, che ad essi si rendeua più sensibile, che ogn' altra cosa, atteso, che non poteuano più vantare quelle grandezze di nobiltà, e quelle affluenze di ricchezza, che essi disseminate haueuano nelle bocche del volgo, & ogn'vno si guardaua dal trattar con loro come soggetti di fede non sincera, e come

vſurpatori di quelle glorie, che per niun' dritto erano loro douute.

Maggiormente s'accese la cupidigia dell' intereſſe all' hora, che ſi vidde auuerarſi ne fratelli Franceſchini l'aſſioma commune *ars deluditur arte*, cioè à dire, che ſtimolata dal rimorſo della conſcienza Violante, e dalli ſtrapazzi, & ingiurie riceuute in loro Caſa, conſtretta per commando del Confeſſore in occaſione del Giubileo à riuelare à Pietro ſuo marito non eſſer detta Franceſca Pompilia loro figlia, mà d'eſſere vn' parto ſuppoſto, il che ſi ſcuopriua molto verisimile sì per l'età d'anni 48. che correua Violante quando ſi finſe di lui grauida; sì perche in anni 14., che haueua viſſuto in legitimo matrimonio con eſſo, mai haueua hauti figlioli; ſi anco perche da Teſtimonij all'hora viuenti ſi poteua hauere la proua concludente della ſuppoſitione di detto parto, e di ciò datane notitia al medeſimo Paolo per venire à qualche aggiuſtamento ſopra la retrattione della conſtitutione della dote di tutto il ſuo valſente patrimoniale, egli ſprezzando l'amicheuoli offerte fatte per mezzo di perſone amoreuoli, ricusò ogni partito d'accordo, onde intimatogliſi da Pietro il monitorio ſopra la ſuppoſitione di detto parto, e nullità di conſtitutione di dote auanti Monſig. Tomatihe fatta concludente proua con ſei Teſtimonij eſaminati con gl' interrogatorij dati per parte di detti Franceſchini, benche il medeſimo Giudice fuſſe di parere ſpedire la Cauſa nel ſolo ſommariiſsimo poſſeſſorio, con concedere la manutentione à detta Franceſca Pompilia *in quaſi poſſeſſione filiationis*, nientedimeno fù dalla di lui ſentenza interpoſta l'appellatione, e commeſſa alla Sac Rota Ponente Monſignor Molines, oue anco pende indeciſa ſopra il principale punto della ſuppoſta figliolanza, e nullità di conſtitutione di Dote, dal rettiſſimo giudicio di tanto Tribunale ſenza dubio attese le concludentiſſime proue ſudette della ſuppoſitione del parto, ſi farebbe deciſa non meno la nullità della conſtitutione di detta Dote, che fatta dichiaratione eſſer detta Franceſca Pompilia di loro figlia ſuppoſta, con che veniua à ceſſare quel vantaggio, che con tanto inganno li Franceſchini haueuano procurato à loro commodo.

Si comproua tutto ciò con il riſteſſo, che publicatoſi non meno in Roma, che in Arezzo l'inganno del Franceſchini, deluſo con

con ſimile artificio per le proue già fatte nella pendenza di detto giuditio, che detta Franceſca Pompilia non era figlia legitima, e naturale di detti Coniugi Comparini ſotto mendicati ſoſpetti affettaua Guido la cauſa di maltrattarla con ingiurie, & percoſſe, e più d'vna volta s'accinſe con ferro, & armi da fuoco per toglierli la vita per vindicarſi contro di eſsa dell'inganno proprio, dal quale reſtaua deluſo, onde conuenne alla pouera moglie in età tenera all'hora di ſedeci anni, in Paeſe ſtraniero, per euitare la fierezza del marito in diuerſi tempi fuggirſene all'Aſilo di Monſignor Veſcouo, e del Gouernatore, ò Commiſſario della Città, perche poneſſero freno alli ſtrapazzi, che ſoffriua, e benche li medeſimi con il loro zelo per all'hora procuraſſero, che foſſe data qual' che tregua alle minaccie tuttauia la pouera Moglie intimorita paſſaua li ſuoi giorni racchiuſa dentro vna ſtanza, e maggiormente crebbe il timore, perche ſi auuidde, che il detto Guido haueua fatto preparatione d'acquetta con la quale pretendeua toglierli la vita ſenza ſtrepito d'armi, & eſſer più ſicuro di far rimanere impunito il delitto. Hor ſe dunque in queſto tempo, oue nõ cadeua alcun'ombra di ſoſpetto d'honore, il Marito machinaua la morte della Moglie, poteua aſtenerſi l'Anonimo Scrittore d'imbrattare le carte à fine di perſuadere, che la ſtrage dell'Occiſi habbia hauta la ſua origine dallo ſtimolo di riparare l'offeſo honore. Meglio aſſai più hauerebbe fondate le ſue ſtampe, ſe ſi foſſe conſultato con il vero, che queſta ſia proceduta dall' intereſse deluſo.

Agitata dalle raccontate anguſtie ſe ne ſtaua la pouera moglie meditando di raccogliere lo ſcampo della temuta morte; & apertoſegli l'intelletto dalla veſſatione, ſi raccomandò al Signor Canonico Conti ſtrettiſſimo congionto del Franceſchini eſponendogli le ſue miſerie, li ſuoi pericoli, li ſuoi giuſti timori, ancor che ad eſſo non ignoti, perche procuraſſe di conſolarla con metterla in ſaluo della ſua vita, & egli toccato da viua compaſſione, e moſſo à pietà per lo ſtato lagrimeuole, nel quale ella ſi trouaua per èſimerla, dal quale ben conoſceua non eſſerui altro ſcampo, che la fuga dalla Caſa del marito, appigliandoſi al detto del Poeta *Heù fuge crudeles terras, fuge littus auarum*, mà non potendo in ciò egli medeſimo darle aiuto, le ſuggerì, che non vi era per ciò eſeguite

re perſona più al propoſito del Sig. Canonico Giuſeppe Caponzacchi ſuo amico, & anco attinente, il di cui ſpirito haurebbe ſuperato ogni cimento, e con eſſo parlatone il Conti, con tutto che trouaſſe difficoltà in ſecondare il deſiderio della giouine, per non incorrere l'indignatione de' Franceſchini, tuttauia preualſe in lui lo ſtimolo della carità, e pietà di ſottrarre dalla morte vna innocente Donna, e riferitale dal Conti l'applicatione di quello all'impreſa non mancò la medema infiammarlo con più ſue imbaſciate, lettere contenenti anche vezzi allettatiui all'effettuation del ſuo ſcampo, conſeruando però anche in eſſa la coſtante volontà di non violare la fede maritale, mentre in alcune loda il medeſimo Canonico per la ſua caſtità, & in altre lo rimprouera per hauerle mandate alcune ottaue poco oneſte, auuertendolo di non degenerare dal contegno, del quale ſi pregiaua, e concertauaſi con quello la fuga, mentre il marito, e tutti di ſua caſa dormiuano, ſi poſero ambedue con l'aſſiſtenza di d. Canonico Conti a vn precipitoſo viaggio per le poſte ſenza perdere vn momento di tempo, ſe non quanto occorreua per la mutatione de' Caualli, & arriuati di notte a Caſtelnouo, ancorche l'Oſte haueſſe preparato vn letto da ripoſo, niente dimeno d'eſſo non ſe ne ſeruirono, perche il Caponzacchi accudj ſempre in ſollecitare il Vetturino à preparare altri Caualli per proſeguire, e terminare il viaggio, nè l'Oſte dì d. luogo eſaminato nel Proceſſo ſopra la fuga ſi ſognó mai di deporre, che nel letto apparecchiato dormiſſero inſieme la Donna, & il Caponzacchi, benche con ſuo diſhonore il Franceſchini habbia publicato il contrario, per colorire colla ſuppoſta cauſa dell'onore la vera cagione della ſtrage da lui commeſſa.

Sopragiunſe in tanto il marito Franceſchini, e vedutoſi dalla moglie, forſi queſta timida, ſi ritirò, ſi naſcoſe come rea d'alcun mancamento commeſſo, d'alcun torto fattogli nel cuſtodire il candore della ſua pudicitia? nò; mà ardita ancorche in età tenera già riferita d'anni 16. gli rimprouerò la conſtanza del ſuo honore, gl'inganni, e ſtrapazzi, che gli haueua vſati, le minaccie accompagnate colle percoſſe, più volte datoli; li veleni, & acquette preparate per toglierla di vita, e che perciò era ſtata conſtretta à quella reſolutione di procurare colla fuga lo ſcampo da maggiori pericoli, con ricor-

ricorrere alla pietà di dd. coniugi Comparini, che come loro figlia l'haueuano alleuata, custodendo però sempre intatte le leggi coniugali, e l'istesso rimprouero fù fatto dal Canonico, il quale haueua nella fuga religiosamente osseruate le misure d'vna douuta modestia.

Che rispose, che tentò il Franceschini, ancorche armato di spada, alla moglie inerme, & al Caponzacchi, che non haueua seco, che vn piccolo spadino? Niente al certo, secondo che deposero li Testimonij, che si trouorno presenti, perche restò dalle giuste rimostranze della moglie conuinto; Ma che oprò? Derelitta ogni vendetta, che per dritto di legge naturale, ò anco ciuile molto meglio competergli poteua di quello, che vada l'Anonimo Scrittore vantando in discolpa di così esecrando delitto, implorò il braccio della giustitia, facendo arrestare dalla Corte di quel luogo la moglie, & il detto Caponzacchi, che poi à sua instanza furno condotti prigioni nelle Carceri di Monsignor Illustrissimo Gouernatore di Roma, auanti di cui querelò li medemi della fuga, e poi non contento, espose altra querela di supposto adulterio commesso con detto Caponzacchi, s'auanzò anche maggiormente con fare strepitoso ricorso al Sommo Pontefice per il castigo di quelli, è rimesse le sue suppliche all'istesso Mons. Gouernatore, ardì con nuoua querela domandare, che fusse la moglie dichiarata adultera, e che a lui si douesse secondo le leggi il guadagno di tutta la dote, il che in sostanza ben fà conoscere, che non insisteua per la riparatione dell'onore, del quale haueua trascurata la vendetta, ma tutto si operaua per solo oggetto dell'interesse, cioè di guadagnare la Dote.

Quali tentatiui, quali esclamationi, quali diligenze non hà adoprato il Franceschini, e l'Abbate Paolo suo Fratello per far dichiarare adultera la moglie, e conseguite il lucro bramato? Sallo Monsignor Illustrissimo Gouernatore, che con tanta sofferenza sostenne le loro appassionate premure. Sallo il Sig. Venturini Giudice della Causa, e lo sanno bene anco tutti gl'altri Giudici, e Notari del Tribunale, che nauseati erano dalle loro importunità. Indi perche la giustizia non poteua in verun conto colpire a loro disegni, mentre dal Processo non costaua d'alcun reato della moglie, nè dal detto Caponzachi, arbitrando rigorosamente nel prudentiale li

li Religiosissimi Giudici più per dare qualchè sodisfattione alli Fratelli Francescchini nelle loro premurose istanze, che per dritto di giustitia diedero vna relegatione di trè anni à Ciuita vecchia al detto Caponzacchi, che prontamente obedì senza essersi mai partito dal luogo destinatogli; e rimanendo anco indecisa la Causa rispetto alla Donna, che loco Carceris era stata collocata nel Monastero delle Scalette, dubitandosi della sua grauidanza con altretanta prudenza fù quella d'ordine di Monſ. Illustrissimo Gouernatore leuata dal Monasterio, non comportando il decoro, che dentro di esso partorisse, e riposta con il consenso di detto Abbate Paolo in Casa di dd. Coniugi Comparini con la sicurtà di sc. 300. d'hauer quella per sicuro carcere.

Con troppa animosità sú questo punto ridarguisce il detto Scrittor Anonimo quello, che dottamente scrisse Monsignor Fiscale, non essersi interuenuto il consenso di detto Abbate Paolo, essendo, come ad ogn'vno è nota la di lui somma, & incorrotta integrità, di non seruirsi di parola nel suo scriuere della quale non gli consti con proua, più che sicura, come euidentemente gli constaua il fatto di detto consenso, mentre l'Abbate Paolo alla presenza propria così restò d'accordo con Monſ. Illustrissimo Gouernatore, e col Sig. Venturini Giudice vnitamente, con eligere l'obligo di *Pietro* Comparini di somministrare gli alimenti senza speranza di recuperarli, come fù eseguito con detto concerto, non meritando la loro qualità vn rimprouero così indecente per esser stati troppo indulgenti con essi.

Con altretanta animosità si nega non hauer detto Abate Paolo mandato di Procura sufficiente da Guido suo Fratello di prestare simile consenso, perche in prendere detta prouisione Monſ. Gouernatore non haueua di bisogno di consenso delle *Parti*, e se hà voluto vsare con esso vn'atto di conuenienza, & vrbanità, non douena a questo lo Scrittore corrispondere con tanta inciuiltà di ridarguirlo di mal fatto per mancanza di sua procura, venendosi con tal procedure a canonizargli da se medesimo, che hà voluto anco ingannare Monſ. Gouernatore in acconsentire ad vna cosa, che non haueua in facoltà di fare, mà ne resta conuinto, perche d. Abbate Paolo era il manipolatore di tutti gl'Atti che si faceuano, nè si moueua vna paglia senza la sua assistenza, & esso era ben prouisto di più mandati di procura del Fratello, dalli qua-

quali risulta vn'ampliſſima facoltà d'operare, come che fuſſe la perſona propria del Fratello, con la clauſola de rato, della quale ogn'vno sà l'efficacia; E ciò ſi confeſſa anche dall'Anonimo, mentre afferiſce, che Guido nella ſua partenza laſciò appoggiata tutta la cõdotta della Cauſa all'Abbate ſuo Fratello. Mà ben ſi conoſce con quale oggetto ſi neghi detto conſenſo, cioè per potere più animoſamente figurare la complicità de' coniugi Comparini alla preteſa diſoneſtà di Franceſcha da loro cuſtodita come figlia, la quale ſi rẽdeua troppo inuerisimile, ammettendo il detto conſenſo dell'Abbate.

Non meno animoſa è l'aſſertione fatta dall'Anonimo, che per pagare gli alimenti ſomminiſtrati alla Donna, quando ſtaua nel Conſeruatorio foſſe il denaro sborzato dal Lamparelli, il quale non reſtaſſe reintegrato dal Depoſito eſiſtente nell'Officio, il quale proueniua dalle monete ritrouate appreſſo la medeſima, ed il Caponzacchi, quando furono arreſtati in Caſtel nouo, che ſi ſupponeuano tolte al marito, mentre li ſc. 48. in circa, che la Donna confeſsò d'hauer portati del ſuo, ſono ſtati intieramente reſtituiti a d. Abbate Paolo, come coſta per ſua quietanza fatta negl'Atti, eſſendo che gli altri fù concludentemente prouato eſſere di d. Caponzacchi, e ſubito, che d. Abbate Paolo hebbe riceuuto d. denaro, per il quale continuamente inſtigaua, ſe ne partì di Roma per eſſer a cõcertare la notoria ſtrage, che ne ſeguì poco dopo

Era però prima preceduto il monitorio ad iſtanza di d. Franceſcha Pompilia auanti Monſ. Vicegerente ſopra la ſeparatione del toro, & aſſecuratione della dote sborzata, che maggiormente affliſſe li Franceſchini, perche in eſſo giuditio ſi farebbero fatte concludentiſſime proue delli loro inganni, delle ſeuitie, delle minaccie, delli veleni, & acquette preparate, dalle quali non n'è reſtato digiuno d. Canonico Conti, che fù mediatore della fuga, eſſendo publica voce, e fama in Arezzo, che circa vn meſe fà moriſſe di ſimil ſoſpetto con che veniua a ceſſare tutta la ſperanza, che fin da principio haueuano concepita del guadagno di tutta la robba del Comparini; Onde ogni ſano intelletto ben vede, e ben conoſce qual ſia la vera radice di così temerarij, e lagrimeuoli eccidij, o la cauſa d'honore, o la ſcandoloſa, e deteſtabile cupidigia, & auidità, dalla quale naeque l'odio delle liti moſſe, & indeciſe pendenti, che erano per riuſcire di maggiore opprobrio di dd. Franceſchini, deciſe che fuſsero a lor danno.

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In vano perciò s'affatigano tanto lo Scrittore, come anco gli altri suoi Difensori ad esagerare la causa dell'honore, mentre quando anco questo gli fosse stato tolto dalla moglie, che non hà veruna sossistenza, come pienamente è stato dimostrato nelle Scritture fatte per parte del Fisco, ritorcendo le medesime lettere, dalle quali si desume la proua più rileuante in contrario hà il Francescbini col proprio fatto rinunciato al dritto di ripararlo, all'hora che non lo vendicò quando la sopragiunse nella detta Osteria di Castel nouo, non giouandogli la scusa d'esser esso inerme, perche seco haueua pure la spada, e forsi altre armi di nascosto, non essendo verisimile, che si volesse porre ad inseguire la moglie accompagnata dal Caponzacchi, senza esserne prouisto, tanto più, che li fuggitiui erano ancor essi inermi, e solo forniti d'vn piccolo spadino, e più tosto volle eleggere la strada giudiciale con farli arrestar da sbirri, e poscia porgerne contro d'essi querela per il castigo, con implorare anche il rescritto del supremo Pontefice, rimettendo le sue suppliche alli Giudici della causa, auanti li quali (ilche ben discuopre l'intentione del medesimo, essendo motiuo del tutto insuperabile) specialmente fece istanza giudiciale del pagamento del prezzo dell'honore supposto toltoli, e si dichiarasse hauer egli per l'adulterio della moglie superlucrata la dote? se dunque in giuditio hà domandato il prezzo del suo honore, come può dirsi, che per honore gli fosse lecito di commettere sì enormi eccidij?

Atteso, che quantunque fosse stato lecito al marito per causa di honore di occidere la moglie per ragione di legge naturale, ò sia anco ciuile, cessa questa potenza, e facoltà, quando il marito vi hà rinuntiato con implorare come sopra il braccio della giustitia, come lo dimostrano le querele esposte, il ricorso fatto al Papa, il premio domandato del suo honore, con le quali giuditiali istanze senza dubbio hà hauuto per derelitta la vendetta priuata dell'honore, che gli poteua competere, e per vna tacita rinunzia restò quella estinta, come dottamente insegna *il Prob. ad Monach. in cap. licet Clerici num. 7. & seq. de Cleric. coniug. e per il testo espresso in cap. ex ore sedentis §. quia verò de bis, quæ fiunt à maior. part. capit.* non potendosi ammettere, che l'attione giuditiale intentata dal Francescbini non fosse per operare la rinuntia alla vendetta del

del ſuo honore, mà gli foſſe permeſſo praticare l'vna, e l'altra, e ſeruirſi di quell'attione, che miglior gli foſſe parſa, perche ciò è contro il Teſto eſpreſſo *nel cap. vt qui duas de elect. in 6.*, il quale viene così ſommato del celebre Canoniſta Gio: Andrea ibi, *non poteſt electus duas electiones proſequi petendo confirmationem ex illis, etiam ſi proteſtetur ſe contentum altera, per quam poſſit conſequi ſuæ intentionis effectum*, *neceſſe ergo habet alteram eligere, qua electa, ad alteram redire non poterit*, e più chiare ſono le parole dell'iſteſſo Teſto ibi, *Regreſſus ad aliam, cui per electionem alterius renunciare, ſibi ius ex ea non competere profiteri videtur, nullatenus habiturum*.

Mà quando anche poteſſe giudicarſi permeſſa queſta variatione da ogni legge abortita, ne reſtarebbe deſtrutto ogni fondamento per la mancanza totale della proua dell'offeſa riceuuta nell'honore, non eſſendouene alcuna nel proceſſo fabricato ſopra la fuga; e ſe bene s'ingegna l'anonimo Scrittore deſumerla dalle preteſe lettere amoroſe ſcritte al Caponzacchi, le quali eſsendo da Franceſca ſtate negate, e non trouandoſi riconoſciute per ſcritte di ſuo carattere, nè di ſuo conſenſo, ò da lei ſottoſcritte, non puole aſſerirſi, che ne reſti conuinta, nè da eſſe può riſulrare proua legitima, come inſegna ogni giuridica prattica.

E quando anche fuori di ragione ſi doueſsero ammettere come ſcritte dalla medema, troppo animoſa, ed irragioneuole ſarebbe l'illazione, che da eſſe ne riſulti vn'attione al marito di occiderla per hauer così ſcritto? Niuno di ſano intelletto reſtarà perſuaſo à cõpaſsionare il marito, che hà proceduto all' occiſione della moglie con il ſolo motiuo, che queſta habbia ſcritto viglietti amoroſi, mentre nè con la carta, nè con la penna reſta offeſo l'honore Coniugale, mà ſolo con atti d'impura diſoneſtà, de quali nel caſo noſtro, ne manca ogn' ombra di proua.

Tanto più che ne ceſſa anche il ſolo ſoſpetto col riflesſo al vero motiuo, col quale furono ſcritti, cioè d'adeſcare con ſimulate dimoſtrationi d'affetto il Caponzacchi à ſottrarla dall'imminente pericolo della morte, dalla quale non trouaua altro ſcampo, che con la fuga, hauendone ſempre preſente lo ſpauento per lo ſdegno, & odio concepito dal marito per le cau-

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ſe accennate, e perciò procedendo da detta cagione le lettere amoroſe, deuono riferirſi à quella, e non à diſoneſta voglia di macchiare la fede coniugale del marito, come ſimilmente à detta cauſa deue riferirſi forſi qualche colloquio, che dalle fineſtre haueſſe hauuto con detto Caponzacchi per concertare il modo di mettere in ſaluo la vita, e non per offendere, ò cimentare la ſua pudicitia, e l'honore del marito, onde anco caſtiſſime Donne ſi ſono ſeruite di ſimili arti, leggendoſi nelle ſacre Carte, che Giuditta nelle medeſime forme ingannò Holoferne per ottenere la liberatione della ſua Patria, e così non meno potè eſſer lecito à queſta pouera Donna vnicamente intenta alla ſicurezza della ſua vita, adeſcare con lettere amatorie il Caponzacchi ad eſſergli ſicuro compagno nella ſua fuga ſenz'alcuna taccia d'inhoneſtà.

Molto meno può ricauarſi l'oſſeſa dell'honore dall'iſteſſa fuga, perche come ſi oſſeruò di ſopra, queſto ſeguì per detta cauſa, e chiaramente ſi vede, che non fù per fare alcun torto al marito, mentre non deuiando in paeſe ſconoſciuto, precipitoſamente per ſtrade conſolari in poſta, e ſenza pernottare in verun luogo ſi portorno ambedui in Roma, oue la pouera Donna ſperaua, che li Comparini, che l'haueuano alleuata come loro figlia, gli haueſſero continuati quelli atti di carità, co' quali l'haueuano creſciuta ſino al doloroſo matrimonio con il Franceſchini contratto. E tutto che ſi và diſſeminando, che vn Vetturino deponga d'hauerli veduti baciare per ſtrada, non hà alcun fondamento giuridico, non ſolo per eſſer Teſtimonio viliſsimo, & vnico, e deponere di coſe inuerifimili, perche douendo eſſo guidare il Caleſſe con quel corſo veloce, col quale li fuggitiui proſeguirono il viaggio, rendeuaſi ad eſſo quaſi impoſsibile il riguardare à dietro, & oſſeruare dentro vn Caleſſe coperto quello, che eglino operauano, tanto più, che la ſua depoſitione è vaga, nè diſtingue, ſe li baci, che ſi dauano era in tempo di notte, ò di giorno, mà molto più ſi rende equiuoca, & improbabile la di lui depoſitione, perche in detto corſo veloce, che faceua il Caleſſe, poteua darſi il caſo, che nello sbattimento di eſſo portaſſe l'accidente, che ſi vniſſe caſualmente il viſo dell'vno con l'altro, che ad eſſo poteua parere in atto di baciarſi, come ben ſpeſſo ſuccede anco quando non ſi fà ſimile cammino, ſecondo la qualità delle ſtrade, e paſſi rotti, che ſi trouano, per il che ſi

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rende assai insussistente, e dubbiosa la di lui depositione per altro ardita, & incredibile.

Come pure ciò, che troppo animosamente si asserisce dall'anonimo, che giunti nell'Osteria di Castelnouo fosse stato ordinato all'Albergatore si douesse aggiustare vn sol letto per riposo delli fugitiui, e che assieme dormissero, perche l'Oste non hà ardito di deporre nel suo esame, che li medesimi vnitamente giacessero in esso, anzi tanto dalla depositione della Donna, quanto dall'altra del Caponzacchi si esclude la conditione, posciache ne' loro constituti constantemente affermano, che niuno di loro si mise in letto per riposare, e che solo la Donna sbattuta dall'incommodo, e patimento di sì precipitoso cammino, per poche hore restasse assisa sopra vna sedia, rimanendo sempre il letto aggiustato nella forma, che l'Oste l'hauena accommodato, che guasto si sarebbe trouato, quando in esso hauessero riposato, e si comproua anco, che sopragiunto il Francheschini in detto luogo, trouò, che il Caponzacchi staua sollecitando fossero posti all'ordine li Caualli per il proseguimento del viaggio, e non dandosi alcuna proua in contrario, non si può con giusta ragione dolersi il Francheschini dell'offesa del suo honore, che intatto dalli fuggitiui li fù conseruato.

Il titolo, al quale similmente s'appiglia lo stesso nomato Scrittore, che il Decreto della condanna del Caponsacchi alla relegatione, sia concepito pro cognitione Carnali, per fomento della causa d'honore, non hà punto di fermezza, perche fù corretto, come non vero, e dissonante dalle proue, del che ne sono legitimi Testimonij l'istesso Monsig Gouernatore, e tutti li Giudici, e Notarij del Tribunale, che interuennero nelle Congregationi Criminali, e se si fà mera reflessione, il titolo della Causa è appunto, come la frasca appesa fuori della porta dell'Osteria, che ben può significare, che in quel luogo si vende il Vino, mà concludere; che quello si vende, sia buono, spacciabile, e recipente, oh questo nò; Perche si trouarà esserui del punto, matricoso, e d'altre qualità infette. Si rileggono perciò le Carte, e le proue registrate nel Processo, con le quali si giustifica il delitto, e non con il titolo erroneo, che nè per ombra si rinuerrà esserui il suppposto commercio Carnale, anzi nè meno sospetto d'impurità, e che nel Processo ne manchi ogni proua ben può com-

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prenderſi dalla leggierezza della pena non corriſpondente alla grauità del delitto, e dall'improprietà di condannare il Caponſacchi come adultero, pendente anche la Cauſa contro la Donna, che non poteua eſſer condannata indifeſa.

Mà per togliere ogni ſoſpetto del preteſo adulterio, ſi prega ogni diſappaſſionato Lettore à riflettere, non eſſerſi potuto commettere in Arezzo, perche alla cuſtodia del Marito vi ſi aggiungeua quella de' Fratelli, quella della loro commune Madre, quella della Serua, quella de' Parenti, e quella de Vicini, anzi la volontaria prigionia della meſchina in vn' anguſta ſtanza ſempre rinchiuſa, per cuſtodire il ſuo candore; nè meno nel viaggio per eſſerſi dimoſtrato del tutto inuerifimile, improbabile, e non prouato, & eſſendo lungi dal vero, come ne pure in Roma, eſſendo notorio, che da Caſtel nouo fù condotta nelle Carceri, e da queſte traſportata nel Monaſtero delle Scalette, e poſcia per la ſua grauidanza, ſotto figurtà d'hauer la Caſa per Carcere di ſcudi 300. conſegnata à detti Coniugi Comparini, trouandoſi intanto il Caponſacchi alla ſua rilegatione in Ciuita Vecchia, e nella quale ceſſaua ogni ſoſpetto, mentre vi era concorſo il conſenſo dell'Abbate Franceſchini tanto zelante dell' honore del Fratello, e proprio.

Nè ſi può ſenza gran violenza ritenere, , mentre ſi ſente dallo Scrittore eſagerare, che l Caponſacchi vſcito dalle Carceri con la rilegatione à Ciuità Vecchia, in tempo, che la Moglie ſi riteneua per Carcere in Caſa di detti Coniugi, albergaſſe in Caſa loro, non potendoſi dire menzogna più sfacciata di queſta, atteſoche il Caponſacchi non fù mai hoſpite di quelli, e ſubito vſcito dalle Carceri ſi portò al luogo della rilegatione, che religioſamente là cuſtodito, ſenza mai eſſer ritornato à Roma, nè la Donna vſcì dal Monaſtero, ſe prima non era giuſtificato à Monſignor Gouernatore, che quello dimoraua in Ciuita Vecchia, colà coſtituito con fede autentica del Cancelliero di quella Corte.

Mi permetta per tanto il detto Scrittore, ch'io lo rimproueri di troppo ardito nel tacciare l'honore del *Franceſchini* macchiato dalla Moglie, con dire, che appena ſalite le ſcale della Caſa del Comparini in compagnia delli ſuoi huomini armati per commettere l'eſecrando eccidio, rimiraſſe quelle mura tutte piene de ſuoi ſcorni, come che le dette muri pareti

reti haueſſero ſaputo Inuentarſi machine d'inſognati penſieri per fomentare la di lui inhumanità ad vna così horribile ſtrage, mentre di ciò non ſe ne porta altra teſtimonianza di quella eſſo ne ſcriue capriccioſamente ſenz' alcun fondamento, volendolo diſonorato per forza, perche à gli altri diſonori ſe gli cumuli ancor queſto, benche à torto, eſſendo ben poſto in chiaro di ſopra, che la cauſa del commeſſo delitto non fù quella dell'honore per riparare li torti fatti dalla Moglie, mà li ſuoi inganni ſcoperti, il lucro ſperanzato, ſuanito, e le liti pendenti.

Di che ſe n'apporta vn'altra non men conuincente dimoſtratione, ſe l'honore à ciò ſpinſe il Franceſchini? non era aſſai vendicato con la morte della moglie? perche imbrattarſi prima anco con il ſangue di Violante, e di Pietro non complici della preteſa diſoneſtà? perche hauer teſe l'inſidie per più continuati giorni anco in procurare la morte di quel pio Benefattore, che moſſo ancor eſſo à pietà, ſomminiſtraua loro aiuto nelle dd. liti? in queſto non vi è caduto mai il ſoſpetto del pregiudicato honore, mentre che la moglie ſtaua in Arezzo, & eſſo dimoraua in Roma, e prima ſi maritaſſe, non era in età, che di ſoli tredici anni non compiti, e dopo la fuga dal marito ritornata in Roma ſi sà come reſtaſſe cuſtodita nelle Carceri, nel Monaſtero, e poi nella Caſa di dd. Genitori, in tempo, che era vicina à ſgrauarſi; Dunque ſi può concludere auueratamente, che il motiuo dell'occiſione fuſſe altro, che dell'honore, mà come diſſe dell'intereſſe, e delle liti, come confeſſa nel ſuo eſame l'iſteſſo Franceſchini.

Nè deue ſprezzarſi la dichiaratione fatta dall'iſteſſa Donna in articolo di morte, all'hora che alla preſenza di molti Religioſi, e Perſone d'intiera fede, conſtantemente ſoffrendo le tante ferite, mantenne, e profeſsò con gran franchezza d'eſſer ſempre viſſuta caſta, e fedele al ſuo Marito, implorando con viſcere di ſomma raſſegnatione dalla Diuina miſericordia il perdono d'ogn'altro errore, che di quello haueſſe commeſſo à ſcorno del Marito, non preſumendoſi in quel punto la moribonda mentire in diſcapito della ſalute eterna dell' Anima ſua; Douendoſi ancora riflettere, che in d. fatto vi concorſe vna ſpecialiſſima gratia dell'iſteſſo Omnipotente Dio in far ſoprauiuere per pochi giorni la moglie, acciò poteſſe

seſſe far paleſe la ſua innocenza, e dar lume dell'Occiſori, ſenza di che ſarebbero andati impuniti li delitti, per ciò nel medemo atto il Franceſchini reiteratamente comandò alli ſuoi Compagni, che oſſeruaſſero ſe era morta bene, e quelli prendendola per le treccie, & alzandola da terra oue giaceua, credettero, che fuſſe morta, perche la pouera Donna per iſtinto naturale ſeppe ben ſimularlo col ſuo abbandonamento, come conteſſano li Delinquenti, e queſto concorſo di gratia tanto più auuera la dichiaratione della moglie, che reſta verificata con la confeſſione delli medemi Rei delli delitti.

Mi ſono riſeruato per vltimo di diſcorrere, e rifiutare quello, che il d. Scrittore rappreſenta dell'Abbate Paolo, e ſe haueſſi à dire il vero, egli ſi può con ragione affermare eſſer ſtata tutta la pietra dello ſcandalo, egli hauer fomentato Guido ſuo fratello à gl'eccidij, egli hauer tramato tutta la machina, atteſo, che eſſo fù quello, che da principio volle a forza con induſtria, e con inganni il matrimonio di d. Franceſca Pompilia, eſſo fù quello, che ſoſteneua le liti Ciuili, e Criminali, che ſotto nome de Grandi ſpacciando animoſamente la loro parola, pretendeua d'eſtorcere con belle inſinuationi, con raggiro, e con inganno quella giuſtitia, che non ſi doueua; eſſo era quello, à cui maggiormente ſi rendeua ſenſibile eſſer ſtato ſcoperto per homo di machina, e l'eſſer ſtato deluſo nel proprio inganno, onde hà ben ragione di dire lo Scrittore, che li volti degl'altri li ſeruiuano di ſpecchio per rileggere le ſue male procedure, mà non dell'honore tolto al fratello.

Si tralaſcia di riſpondere à ciò, che l'Anonimo procura di far credere in lode dell'Abbate Paolo Franceſchini, per eccitare maggiormente il compatimento, mentre l'intentione dell'Autore della preſente riſpoſta, altra non è, che di metter in chiaro la falſità de ſuppoſti contro l'onore della pouera Donna, e de Comparini, e di ſeruire alla giuſtitia, laſciandone il giuditio à chi n'hà piena cognitione, e per l'iſteſſo riguardo ſi traſcura la riſpoſta à molt'altre improprietà, che dal detto Scrittore inutilmente ſi dicono ſenz'alcun propoſito, concludendoſi la preſente riſpoſta coll'eſempio da eſſo allegato di Sanſone, che all'ora, che ſi vidde eſpoſto alle publiche burle del Popolo, diede vna ſcoſſa alle Colonne del Palazzo, facendolo cadere per morire con gl'altri, e ſotto le ruine di quello

quello, per non esser più ludibrio de la gente; Così d. Francescchini, per non esser più schernito da suoi inganni, conuiene, che con li suoi Compagni paghi la meritata pena de' proprij delitti, troppo pernicioſi alla Republica, & alla quiete, e ſicurezza, che deuono prouare li Litiganti nella Corte di Roma, per mantenere la quale hà prouiſto la vigilanza de Sommi Pontefici Aleſſandro VII. e de Succeſſori, con la Conſtitutione ſopra di ciò publicata, e co' Bandi ſucceſſiuamente promulgati; La ſanta diſpoſitione delle quali Leggi doueua tanto più raſſegnatamente eſſeruarſi, quanto che haueua il medemo elctta la ſtrada giudiciale, e li ricorſi fatti al Sommo Pontefice Regnante, zelantiſſimo del giuſto, erano ſtati rimeſſi à ſuoi Giudici, di che non ſenz'vna sfacciata ingiuria poteua dolerſi, come pare, che l'Anonimo Scrittore voglia aſcriuerlo ad aggrauio, dal quale s'eſacerbaſſe lo ſdegno del Franceſchini, il che parimente dimoſtra con qual animo prorrompeſſe in eccesſi così deteſtabili.

Ill.me & Reu.me Dñe. OMiſſa vlteriori decertatione cum Domino meo Fiſci Aduocato ſuper communicatione ſuarum Allegationum, quia tempus breue eſt, & magnam eidem obſeruantiam profiteor vſque a minori ætate; Tranſeat, quod vbi agitur de nece inflicta per maritum vxori ſuæ non in actu deprehenſionis eiuſdem in Adulterio, ſed ex interuallo, ſola ſuſpicio quantumuis vehemens non ſufficiat ad eximendum à pœna ordinaria *legis Corneliæ de Sicar.*, ſed requiritur liquidiſſima probatio Adulterij, quemadmodum exaduersò prætenditur, cuius tamen contrarium nos probauimus in præterita §. *Quamquam ad hoc*, & tradunt ibidem non allegati *Dond. conſult. 97. num. 16. in fine*, *Sanfelic. deciſ. 337. num. 12.*, *Muta deciſ. 61. num. 2.* vbi quod ſufficit, quod reperiantur in manſione ſoli, & *num. 3.*, præſertim ſi mulier erat pulchra, *Maſcard. de probat. concluſ. 61. num. 1.*, & *duob. ſeqq.*, vbi refert illud Ouidianum

Lis eſt cum forma magna pudicitiæ,
Et vir illam deſiderabat, proùt in præſenti iuxtà aliud eiuſdem Authoris
A Iuuene, & Cupido credatur reddita Virgo?

In præſenti lumus in caſu nedùm liquidiſſimæ probationis, ſed facti notorij, quia habemus Decretum huius Tribunalis, per quod huiuſmodi Adulterium fuit canonizatum, cuius verba, quamuis relata in præſenti Informatione §. *Abſque eo*, quod placet hìc repetere, quia ſunt nimis clara, ibi -- *Ioſeph Maria Caponſacchi de Aretio pro complicitate in fuga, & deuiatione Franciſcæ Comparinæ, & cognitione carnali eiuſdem relegatus per triennium in Ciuitate Vetula.*

Non autem præterire poſſum, quod adhuc prætendatur, quod huiuſmodi Decretum fuerit reuocatum; quia, vt dixi in Informatione, veritas eſt in contrarium; ſolùm enim habemus, quod in mandato de excarcerando Canonicum delinquentem, omiſſa relatione totius ſupra relati Decreti, fuit dictum -- *pro cauſa, de qua in actis*, quæ verba tantùm abeſt, quod præſeferant dictam reuocationem, quinimò probent eiuſdem Decreti confirmationem, vt firmauimus in Informatione §. *Nec verum eſt*, quod idem dicendum venit de ſimilibus verbis adhibitis per Notarium in obligatione quam fecit Franciſca Pompilia de habendo domum patris pro carcere, cum à Monaſterio, vbi ſecurè permanebat, fuit ad illam traducta ex cauſa ſuppoſitæ infirmitatis, ſed veriùs dicam, prægnantiæ, quam malo fato voluit abſcondere.

Tanto magis, quod iſta prætenſa Decreti reuocatio non potuiſſet fieri altera parte non audita, quemadmodum dixi in Informatione §. *Eoque magis*.

Sicuti præterire non poſſum, quod dicatur Canonicum fuiſſe condemnatum ſolùm in pœnam relegationis ob defectum probationis Adulterij; Si enim huiuſmodi probatio non extitiſſet, quo iure potuiſſent Domini mei Iudices exprimere in Decreto, quod illum condemnabant pro cognitione carnali eiuſdem Franciſcæ Pompiliæ? Veritas itaque eſt, quod Iudices habuerunt pro concludentiſſimè iuſtificato dictum Adulterium, & dictum Canonicum de eodem conuictum, cùm in Proceſſu nil aliud deeſſet, quàm deprehenſio in illo actu obſcæno, quàm non eſſe neceſſariam ad probandum Adulterium, in his terminis ſcripſit *Aſflict. in Conſtitutione ſi maritus num. 4. verſ. & ponderа*, & ſequuntur *Farinac. quæſt. 121. num. 42.*, *Polic. de Reg. Aud. tom. 2. tit. 10. cap. 7. num. 29. verſ. ac proinde pag. 34.*

Quod verò pœna, in qua fuit condemnatus dictus Canonicus non reſpondeat dicto delicto, circa hoc plura poſſent replicari, ſed quia id non reſpicit D. Guidonem, ideò etiam hoc paritèr tranſeat; Vtcumque enim ſit quiſnam negare poteſt, quin idem D. Guido perlecto dicto Decreto, quod gloſſa non indigebat, iure debuerit iraſci de violata ſibi coniugali fide, & quod ſi poſteà de huiuſmodi violatione vindictam ſumpſit aliqualiter non ſit excuſandus, *Textus* eſt *in l. ſi Adulterium 38. §. Imperatores ff. ad l. Iul. de Adulter.*, *& in l. ſi quis in graui §. ſi quis moriens in fine ff. ad S. C. Syllan.*, & tradunt Doctores per nos plena manu congeſti in præterita §. *Et conciliando*.

Et quidem quamuis huiuſmodi vindictam ſumpſerit ex interuallo, vt pleniſſimè fuit demonſtratum in dicta præterita Informatione §. *Nec verum eſt*, ita vt pauci Doctores ſint, qui contrarium teneant, & propterea hæreticum ferè ſit de veritate huiuſce ſententiæ dubitare, vt inquit *Soccin. ſen. conſ. 74. num. 8. lib. 1.* præſertim cùm illa ſit recepta in omnibus ferè Tribunalibus Mundi, ſignanter in illo Sacræ Conſultæ, quæ normam præbet cæteris Tribunalibus Vrbis, & totius Status Eccleſiaſtici, ita vt ab eius opinione recedere ad inſtar quoque ſacrilegij eſſe affirmet, *Conciol. alleg. 95. num. 33.*, *& allegat. 97. num. 8.*

Eſt autem pulchra prætenſio velle Adulterij liquidiſſimas probationes excludere ex dicto ipſius Mulieris de illo conuictæ, & illius occaſione, vt ingenuè fatetur Dominus meus Procurator Generalis Fiſci, in Monaſterio retentæ, cum ſcilicet non teneretur neque in Articulo mortis detegere propriam turpitudinem, vt probauimus in dicta præſenti Informatione §. *Et quatenùs, & §. ſeq.*; Et cum ipſa malè, ne dicam peſſime vixerit in perniciem honoris, & exiſtimationis ſui Viri nullam ei iniuriam irrogamus, ſi præſumere volumus, quod nec in morte voluerit reſipiſci, iuxtà illud -- *Chi mal viue, mal muore* -- & quia nemo nec in morte præſumitur Sanctus Ioannes Baptiſta, vt in Informatione § *Nec valet dici*.

Firmo itaquè remanente, quod D. Guido iuſtam habuerit Cauſam occidendi, ſiuè occidere faciendi Franciſcam Pompiliam

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Vxorem ; Idem necessariò dicendum venit quoad homicidia Petri, & Violantis Soceri, & Socrus, quia in Processu fabricato occasione fugæ dictæ Franciscæ Pompiliæ à viro emersit etiam probatio, quod ipsi conspirarunt in illud idem delictum, consequentèr fuerunt in causa læsionis honoris, & existimationis eiusdem D. Guidonis, quæ etiam honoris læsio ex eo resultabat, quod ipsi suppofuerunt, & palàm omnibus fecerunt, quod eius vxor non erat eorũ filia, nec legitimè genita, sed filia meretricis, & posteà illam receperunt in suam Domum, postquàm fuit declarata Adultera, aut enim ipsa erat ipsorum filia, & non debuissent hoc Iudicialiter negare, aut verò non erat filia, & nec debuissent illam recipere in suam Domum, postquàm fuit de Adulterio conuicta, cum taliter agendo facto ipso declarauerint se eiusdem Lenones fuisse, & esse velle, *l.* 2. §. *Lenocinij l Mariti lenocinium ff. ad l. Iul. de adult. l.* 2. *C. eodem*, *Menoch. de arbitr. cas.* 534. *num.* 23. *Farinacc. quæst.* 144. *num.* 94. *&* 98.

Confessio D. Guidonis cum illa Qualitate, quod homicidia demandauerit ex Causa honoris non potèt scindi, sed acceptari debet per Fiscum cum dicta Qualitate, vt probauimus in Informatione §. *Huiusmodi enim Confessio*; Doctores verò in contrarium allegati per Dominum meum Aduocatum Fisci procedunt in Qualitate extrinseca ab ipsa Confessione, & quæ aliunde non iustificatur, & demùm vbi agitur ad pœnam extraordinariam, quemadmodum & nos admisimus in nostra Informatione §. *Præsertim*.

Sicuti autem Causa honoris releuat Dominum Guidonem à pœna ordinaria homicidii, ità eum releuare debet ab alijs quibuscumque pœnis ordinarijs appositis in Bannimentis, & Constitutionibus Apostolicis contra deferentes arma prohibita, seù committentes alia delicta ; dixi enim, & repeto, quod iustus Dolor, qui eum excusat ab vno Delicto, excusare quoque debet ab aliis, cum semper, & vbique militet ratio, quod ipse non fuerit in plenitudine Intellectus iuxtà latè firmata in Informatione à §. *Agnoscit Fiscus, vsque ad* § *Quo verò ad Litem*.

Et sicuti ista Causa est sufficiens ad consequendam minorationem pœnæ respectu D. Guidonis, ità pariformiter sufficiens reputari debet ad illam consequendam fauore eius Sociorum, qui tamquàm Auxiliatores puniri nequeunt maiori pœna, quam ipse Principalis iuxtà innumeros ferè Doctores, & quidèm magni nominis allegatos tùm in præterita §. *Quæ dicta sunt, cum seq.* tùm in præsenti §. *Verùm, & Socios*, quibus exaduerso nullum fuit datum responsum.

Facilius verò respectu Blasij Agostinelli, qui neutiquàm fassus fuit aliquem occidisse, seù vulnerasse, sed solummodo adstitisse, vt præuentiuè perpendimus in Informatione §. *Quoad Blasium*.

Et quoad Dominicum, & Franciscum vltrà deducta fauore aliorum, ipsi sunt forenses, qui propterea non ligantur Bannimentis Gubernii (quibus non ligantur alii, qui non sunt de Distri-

du) nec Conſtitutionibus Apoſtolicis Armorum delationem prohibentibus, vt diximus in præterita § *Quæ eo facilius*.

Multò magis cùm Dominicus adhùc aſſerat ſe eſſe ætate minorem, prout pro tali fuerat deſcriptus in Proceſſu *fol.* 304. & reſpectu Franciſci vltra prædictam deſcriptionem, de qua in eodem Proc. *fol.* 35. habeamus fidem Baptiſmatis, quæ concludenter probat ætatem, *Buratt. deciſ.* 75. *num.* 1., *& deciſ* 117. *num.* 20. *par.* 12. *recent.* natus enim fuit die 14. Februarii 1674. quo fit, vt tempore commiſſi delicti) quod attenditur ad effectum punitionis iuxtà *Gloſſ. in l. ſciant v. moritur ff de legit. hæred.*, *Marſil. in l. Infant, num.* 13. *ff. ad l. Corn. ad Sicar. & in l. de minore*, *n.* 40. *ff. de quæſt.*, *Clar. in pract §. fin. quæſt.* 60. *num.* 4., *Tiraq. de Pœn. temper. cauſ.* 7. *num.* 8., *Menoch. de Arbitr. caſ.* 329. *num.* 22., *Campan. reſol.* 2. *num.* 22.) nondùm expleniſſet annum vigeſimum quartum ſuæ ætatis; Minori enim viginti quinque annis eſt pœna minoranda, *l. ferè in omnibus ff. de Regul. Iur.*, *l. aut factas §. Perſona ff de Pœn.*, *l. Auxilium §. In delictis, & l. ſi ex Cauſa §. Nunc in minoribus ff. de minorib. cap. hoc ſit poſitum* 26. *quæſt.* 7., *Bartol. in l. quid ergo §. Pœna grauior. ff. de his, qui not. Infam.*, *Marſil. conſ.* 48. *num.* 54., *Vulpell. conſil.* 63. *num.* 10., *Prat. reſponſ Crimin* 25. *num.* 46., *Farin. quæſt.* 52. *num.* 41., *& ſeqq. Odd. de Reſtit. in integr. par.* 2. *quæſt.* 80. *num.* 72., *& pluribus ſeqq.*, *Baron. de effect. minor. ætat. effect.* 10. *num.* 1., *& ſeqq.*, *Narbon. de ætat. annor.* 25. *quæſt* 43. *præſertim num.* 6., *D. Raynald. obſerv. par.* 2. *cap.* 14 *in Rubr. n.* 270, *& 274. cum ſeq.*, *Theſaur. dec.* 161. *num.* 4., *vbi inuebit in Iudices contrarium practicantes, & nu. ſeqq.*

Et quidèm de neceſſitate, non autem Iudicis arbitrio, quià huiuſmodi pœnæ minoratio procedit ex Beneficio à Iure introducto, & ex Cauſa intrinſeca delictum minuente, *Ancharan. quæſt.* 58. *num.* 3., *& 4. lib.* 2., *Odd. teſtans de communi dicta par.* 2. *quæſt.* 80. *num.* 93., *Farin. dicta quæſt.* 92. *n.* 163., *& 165.*, *Baron. d. effect.* 10. *num.* 14., vbi quod Iudex aliter faciens tenetur in Syndicatu, *& numeris ſeqq.*, *Sabell. alleg* 6. *num.* 101. *poſt Tom.* 2. *ſumma*, *Prat. reſponſ. crim.* 25. *num.* 46., *D. Raynald. dicto cap.* 14. *in Rubr. n.* 288. *Theſaur. dicta dec.* 161. *num.* 6.

Licèt verò non deſint, qui contrarium ſentiant, quod ſcilicèt totum pendeat ab Arbitrio Iudicis, noſtra tamen ſententia eſt verior, & receptior ſaltem in Criminibus, quæ non ſunt de atrociſſimis, vt diſtinguendo tradunt *Spad. conſ.* 110. *num.* 15. *lib.* 1., *Farinacc. dicta quæſt.* 92. *num.* 107., *Campan. reſ.* 2. *num.* 26., *&* 55. *ibique Oril. num.* 3. 6. *&* 7., & quod vbi dilictum eſt ſolum atrox, vel atrocius Iudex teneatur neceſſitate officii pœnam minorare vltrà mox allegatos *Theſaur. dicta dec.* 161. *num.* 5.

Et quod hæc ſententia locum habeat in crimine homicidij, non obſtante diſpoſitione *Textus in l. ſi quis te Reum Cod. ad l. Cornel. de Sicar.* ibi-- *Si quis te Reum legis Corneliæ fecerit Innocentia purgari crimen non adulta ætate defendi conuenit* -- quia diſpoſitio huius Textus talitèr interpretari debet, vt nempè minor Delinquens

non

non excuſetur in totum, ſed tantùm mitiùs puniatur iuxtà antiquiores plena manu congeſtos per *Farinac. dicta quæſt. 92. n. 112. & ſeqq.* quod idem ſentiunt *Guazzin. def. 33. cap. 17. num. 1. Caball. reſ. crimin. 134. num. 11. Prat d. reſponſ. crim 25. ſub num. 48., Paſchal. de patr. poteſt. par. 2. cap. 8. num. 22. Ther. compend. deciſ. par. 3. ſect. 2. Theſaur. d. deciſ. 161. præſertim num. 7. Corthiad. dec. 92. num. 29. & deciſ. 96. num. 57.*

Maximè quando, provt in præſenti, minor non deliquit ſolus, ſed in ſocietate aliorum, tunc enim præſumitur ſeductus, ideoque facilius pœna ordinaria eidem venit minoranda *Farinac. d. qu 92. num. 108. circa fin. verſ. & etiam quia, Hector. Fælic. alleg. 36. nu. 6. par. 1. Guazzin d. def. 33. cap. 17. num. 1. verſ. & latè ego deduxi, Thor. vot. 10. num. 16. par. 2. Oril. ad Campan reſ. 2. num. 8. D. Raynald. dicta par. 2. cap. 14. in Rubr. num. 282 verſ. ſecùs quando, & verſ. & quod ad minorandam Chartar. deciſ. crimin. 78. num. 6.*

Neſcimus quo ſe vertere prætendat Fiſcus pro deſtruendis hiſce iuridicis fundamentis, quia Domini mei agentes ipſius Partes nec in præterita, nec in præſenti quidquam motiuarunt circa prædicta, quotieſcumque verò prætendant hanc noſtram exceptionem elidere cùm Statuto Florentiæ *lib: 1. rubr. 33.* qualiter minor 16. annis delinquens puniatur in criminalibus, plures ſuppetunt reſponſiones, &

Primò, quod diſpoſitio huius ſtatuti non extenditur ad delicta commiſſa extrà Territorium dictæ Ciuitatis, ſed locus delicti, eiuſque ſtatuta attendi debent, iſtis verò ceſſantibus, prout in præſenti ceſſant, quia bannimenta huius Gubernij, vbi agitur de punitione quoad forenſes locum non habent ex defectu poteſtatis Principis, ſeù Officialis illa condentis ex allegatis in præterita §. *Quæ eo facilius, &* §. *ſeq.* tunc delinquens puniri debet ſecundum Ius commune *Bartol. in l. cunctos Populos num. 49. & 50.* ibique etiam *Bald. num. 45. & ſeq. Cod. de Summa Trinit. & Fid. Cathol., Farin. pragm. crimin. par. 1. litt. D num. 107.*

Secunda Reſponſio eſt, quod ſtatutum nil aliud dicit, quam quod minor annis decem, & ſex non poſſit puniri pœna ordinaria delicti, conſequentèr operari debet in hoc caſu, quando verò agitur de minore excedente dictam ætatem, ſed minore annis viginti quinque, Regula deſumi debet à Iure communi, à quo dictum ſtatutum in tali caſu paſſiuam recipit interpretationem, vt in puncto huius met ſtatuti conſuluit *Marcus Aſin. inter ſtat. crimin. diuerſ. in fol. tom. 2. conſ. 110. num. 12.* ſequitur *Caball. dicta reſol. crimin. dicto caſ. 134. num. 11. ad medium*, vbi teſtatur ſe vidiſſe ità practicari pœnam minori annis 25. maioritatem decem, & octo minorando, & in puncto aliorum ſimilium ſtatutorum reſoluunt *Anchara. qu. 58. num. 5. & ſeq. Boſſ. tit. de confeſſ. n. 69. verſ. Conſideratio tamen.*

Tertia denique reſponſio, & quæ ponit falcem, ad radicem eſt, quod iſte Inquiſitus non eſt de Ciuitate Florentiæ, nec de eius Territorio, ſed de Territorio Aretino, Ciuitas autem Aretij, eiuſque

eiuſque Comitatus non ligantur Statutis Florentinorum, tùm quia non ſunt Subditi, ſed recomendati dictæ Ciuitati Florentiæ, vt in puncto conſuluit *Soccin. Sen. conſ. 7. præſertim num. 2. & 4. ſeqq. vol. 1. & conſ 74. quod eſt Bartholomæi filii ſub num. 8. eod. vol. 1.* vbi dicit, quod precedenti conſilio ſui Patris ſe ſubſcripſit ſeuerus legum Interpres Thomas Docius Senenſis; Tùm quia eadem Ciuitas Aretii habet propria ſtatuta *Soccin. Sen. d. conſ. 7. num. 7. vol. 1.*

Recurritur enim ad ſtatutum Ciuitatis dominantis, cum aliæ Ciuitates ſubiectæ non habent propria, ſecùs ſi illa habeant per *Text. in l. de quibus 31. vbi Bald. num. 6. & Caſtrenſ. nu. 2. in fine verſ. patet etiam ff de legib. Soccin. d. conſ. 7. eod. num. 7. vol. 1.* idem *Caſtr. conſ. 129: num. 1. lib. 1. Gabr. conſ. 29. num. 47. lib. 2 Mandoſ. in addit. ad Roman. conſ. 21 & circa finem, Rot coram Coccin. dec. 1451. num. 6. & coram Dunoz. Iun. deciſ. 937. num. 18. & in rec. dec. 107. num. 17. & ſeqq. par. 15.*

Itaque ſunt contraria, velſimul incompatibilia *Gratian. diſcept. 9. num. 25. Rot. coram Dunoz. Iun. dicta dec. 937. num. 19. & ſeq & dicta dec. 107. num. 19. & tribus ſeqq par. 15. rec.*

Cuiuſmodi eſſe illa Ciuitatis Aretii reſpectu aliorum Ciuitatis Florentię teſtatur *Soccin Sen. d. conſ. 7. d. num. 7. vol. 1.* & patet *ex Rubr. de oblig. minor.* vbi mandatur, quod minores 25. annis non poſſint obligari ſine certis ſolemnitatibus, ſuper qua conſuluit *Paul. de Caſtr. conſ. 124. lib. 4.* ex hoc enim ſtatuto ſatis conſtat, quod in dicta Ciuitate, & eius Comitatu minor ætas regulatur à Iure communi.

Quatenus verò *Fiſcus* habeat alia fundamenta, quæ ex noſtro debili Iudicio diuinari non potuimus, ſupplico illa benignè communicari, ne Pauper Inquiſitus minor remaneat indefenſus.

Denique reſpectu Domini Guidonis ſupplico animaduerti ad infęlicem ſtatum ipſius, & nobilis eius familiæ; habuerunt enim omnes de hac familia, eiuſque cognatione, quod ſatis, & vſque ad vltimum vitæ ſpiritum lugere poſſint, cùm reſpexerint ad ignominiam eiſdem illatam ab hac muliere, eiuſque Genitoribus, propter quam, & dubium in præſenti eſt, quod aliquis etiam Proximior inſanuerit, hoc ſanè dictat eximia Pietas Clementiſſimi Principis, & Illuſtriſs. D. mei, quibus ipſemet Inquiſitus toto corde ſe commendauit in ſuis conſtitutis, abſque eo, quod hoc idem diſcant ab *Auctore Anonym. Subtus Sanſalic. dec. 337. in fine.*

Quarò &c.

Deſiderius Spretus Pauperum Aduoc.

Illuſtriſs. & Reuerendiſs. D.

Vrbis
GVBERNATORE

In Criminalibus.

Romana Homicidiorum.

P R O

Domino Guidone Franciſchino, & Socijs Carceratis.

C O N T R A

Fiſcum.

Replicatio Iuris D. Aduocati Pauperum.

ROMÆ, Typis R. Cam. Apoſt. 1698

Ill.mo Sig.r Sig.r Prone Oss.mo

Hardi giunsero Le Giustificationi inviatemi dal V. Ill.mo a favor della b.ne del Sig.r Guido Franceschini, poiche hauendo determinato La Congregaz.ne di Monsig.r Ecc.te che detto Sig.r Guido fosse Reo di morte non ostante Le Ragioni Addotte a suo favore, a gran fatica dalle medesime ottenni qualche dilatione per giustificare il suo Clericato dal mio allegato, al che effetto fui spedire straffetta in Arezzo; ma giudicando essendovi Le Stà di N. S. il non differire La esecutione della sentenza già destinata, hebbi per bene con Chirografo particolare derogare ad ogni Privilegio Clericale, che gli fosse potuto competere, et alla minorità riferto di grande di Spagna uno de Complici; di che hoggi di strada eseguita la sentenza contro tutti cinque, colla solita dichiaratione nel genere della morte, hauendo il Sig.r Guido terminata La sua vita colle accollationi, seruenti di Consolatione ai suoi Parenti, et Amici, e esser stato commiserato da tutti gli huomini d'honore, e dai buoni, ancorche, confessando La mia debolezza non possa negare di seruirmi un Gesuita Rammarico, attribuendo il tutto al non hauer'io saputo rappresentare Le sue Valide Ragioni. Comprendi il Sig.r Iddio questo fu mosso auuedersi alla sua Casa, et ai suoi Amici con copiosa fortuna e desiderosa della Continuaz.ne de' suoi Comandi, mi raffermo, e resto

Di V. S. Ill.ma

Roma 22. Febr.o 1698.

Diuotiss.o Ser.re obb.mo
Giouanni Angelo

le giustificazioni mandate non sono giunte in tempo perche
leggi finalmente leggo tenga conferma è stata eseguita
la giustizia del giovane di Guido con farli la testa, e è
questo vicari non vuol'impicciarsi. La causa fù rimessa
to Martedì più perche v'era Lebole il chierico, e
di questo si prevedeva che quando à lui non volevano
la vita dopo che v'era perduta la speranza di
havere le giustificazioni il Papa pensò ieri il Chi
rografo, e hà voluto che oggi ordinariamente s'eseguisca
già che è stata ordinata di Dio, che agli giorni simili pensi
almeno con le mistere fatte la vi è vi vuole che muoia
da galant'huomo, perche oltre l'essere morto con corag-
gio e singolarità è stata compatitione da ogni gen-
til'huomo, e non hà perduto niente la casa sua
in materia della reputazione. Vi è un corso tutto
Roma come può credere, e non vi è stato ripiego, con
tutto che si sia molto forse, e non si siano mandate
raccomandazioni di gran conseguenza, perche l'Ill.
Ambasciatore dell'Imperatore ne parlò di giovedì
Martedì, conforme egli mi disse ierl'altro, e più le volte

sono precipitose in cui subito
ho terminata la mia visita di Mons.r Del Comitio, oggi
subito che Mons.r Segretario riceverà questa penso che
siano a lor ordine. Io la prego à favorirmi di quelle copie
del processo più presto che sia possibile, e quanto il Can.
Filippo non ne tenni l'addio facendo ammirarmelo
perche io possa pensare à altri passi subito una
volta unite di questo imbroglio di possibile sia
a fine resto con rivenirla

Di V.S. Molto Rev.da

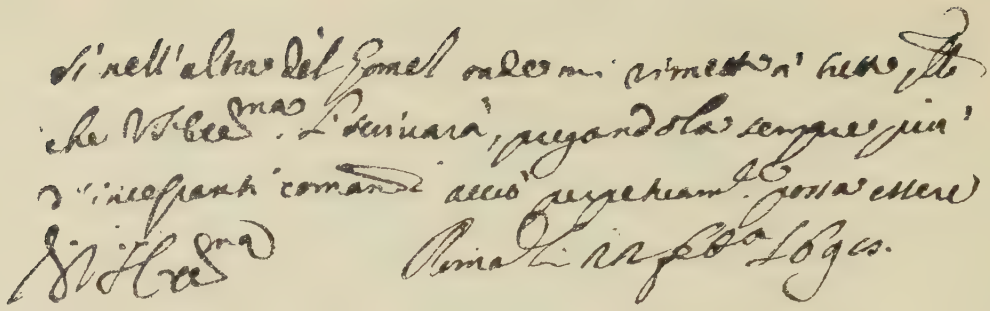
Roma 22 Febb.o 1690

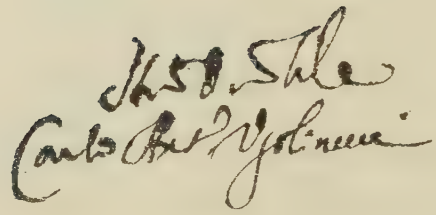
Di V.S. Molto Rev.da

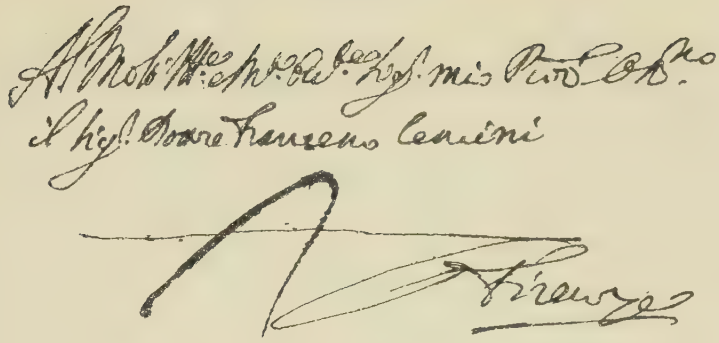
Gaspare del Torre

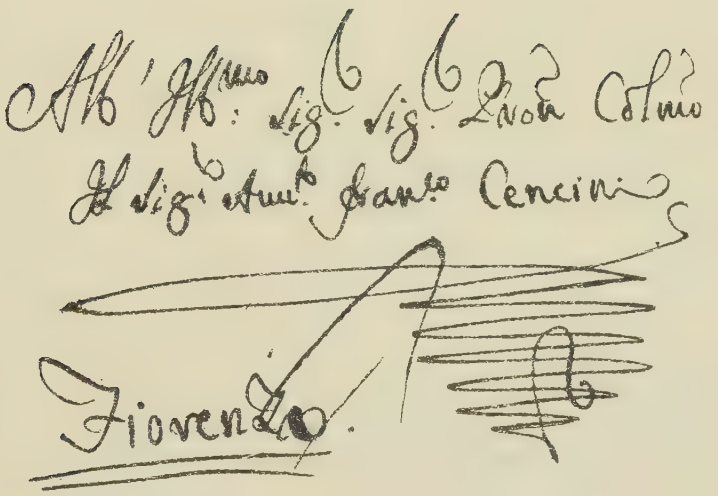
M.to Ill.re et Ecc.mo Sig.r Sig.r mio Oss.mo

Martedì si propose la Negotiatiss.ma Causa e stata long.a del Gouer-
no risolue = Differire et ad Mercordì = La mente era che li
aggettassero le giustificationi del Officiale consegnato. Sù
questo fauoreuole Scioglimento pigliarono fiato li Oppositori
e cominciarono a negotiare i buoni Amici, quando Mes.r
Agg.to Salaro sorse alle due di Nouembre mostrò proprio sottoscrit-
to il Chirografo dengato all Officiale questi si adunasse
et altra minatta di uno delli Correi. Sottoscritto il Chirograf
di giornale Giustitia tal nuoua, e con essa la certezza
della Giustitia che s'seguita Oggi dongue il pranso di
cinque e cioè del povero Mes.r Guido con il taglio della Testa
e degl'altri quattro Correi con la Forca. Non significo à
V.ra Ecc.za il mio dolore perche di giusta non essere la mia
Verità testimonio.
Le giustificationi sarebbero state di piacevole grandezza
ma non nel Caso presente, perche Mes.r Off.le ha voluto così
Escludere la proua del fisco, mancandogli forse una risposta
che dourà dare subito che mi sarà esposta acciò V.ra Ecc.za
habbia l'intiera positiua.
Hora che il Negotio Causa del Conte è sbrigato dagl'interessi
giouerebbe seguire V.ra Ecc.za di Nella Causa Matrimoniale









Romana.

Illuſtriſs. & Reu^me. Dñe. IN contẽtione acerrimè, & eruditiſſimè habita inter DD. Pauperum Defenſores, & Fiſcum in Cauſa Homicidiorum per conductos homines patratorum à D. Guidone Franciſchino in perſonam Franciſcæ Pompiliæ eius Vxoris, & Petri, ac Violantis Coniugum de Comparinis, renui in arenam deſcendere, ne à proprio, quod cum eiſdem DD. Defenſoribus ago, munere declinare viderer; Deditque moras, ac tempus indulſit tacita etiam miſeratio, nimis enim præiudicare credebam eiſdem Guidoni, & Socijs pro tali Reatu carceratis, ad quorum excuſationem præcipuè ſe exhibebat cauſa honoris, ſi tunc voluiſſem proſequi Defenſam longè antea mihi commiſſam pudicitiæ, & honeſtatis eiuſdem Franciſcæ Pompiliæ, cuius teneram Coniugij mentem nulla vnquam impuræ libidinis aſperſit infamia, & cui ſuſpicax Maritus nihil potuiſſet obijcere, niſi Vxorcidium fuiſſet ſequutum, quaſi ex hoc ſolùm Adulterium voluerit probare, quod Vxorem potuerit occidere, & occiderit, vt crederetur Adultera.

Modò autem, quo, reſpectu Carceratorum omnium, Cauſa remanſit funeſtiſſimè terminata (ſic enim deſinunt, quæ incipere non debuiſſent) reaſſumendo infeliciſſimæ quæſtionis pugnam tutiſſimè aſſero, quod ex latè deductis in mea Informatione ſuper excluſione aſſerti Raptus ex gratia reaſſumenda; Et ex latiùs cumulatis per Illuſtriſſimum D. meum Fiſci Aduocatum in ſuis doctiſſimis allegationibus in vtraque Cauſæ propoſitione diſtributis, abſoluendam omnino eſſe memoriam prædictæ Franciſcæ Pompiliæ à ſibi iniuſtè, & nimis animosè per Virum impicto Adulterij crimine, & per definitiuam Sententiam declarandum ipſam Maritale fœdus non violaſſe; Abſque eo, quod incongrua videatur talis Inſtantia, nam quamuis per mortem omnia delicta ceſſent, vt per *Text. in l. Defuncto*, vbi *Gloſſ. & DD. ff. de public. delict. & in l. Senatuſconſultus*, §. *Si propter*; *ff. ad Tertullian. & in cap. Quorumdam*, *diſtinct.* 22. tradunt *Eugen. conſ.* 21. *num.* 2., *D. Canonicus*

Rainald.in ſyntax.rer.criminal.tom.1.cap.2.§.1.numer.75. verſ.Et quando reus,& tom.2.cap.23.§.1.2.& 3.num.234. Carpzou.in prax.criminal.tom.3.quæſt.141.num.1. Nihilominus quando delictum eſt atrox, & eius naturæ, vt indelebilem infamiæ notam ſecum trahat, eius memoria ſemper durat, ac propterea intereſt D. Principali ipſius Auctricis famam ab aſſerto Adulterij crimine vindicare, vt optimè tradunt *Eugen.conſ.21.num.5.circa med.Peregrin. de iur.Fiſc.lib.4.tit.5 num.35.* ibi: *Decimus tertius caſus eſt, cùm Hæredes defuncti ad purgandam infamiam, quæ publicè contra defunctum laborat de aliquo crimine, volunt, ad tuendam illius innocentiam, quod de crimine ipſo cognoſcatur, nam id fieri iure conceditur; Boſs.tract. criminal.tit.de pœnis, num.34.prope fin.* ibi: *Et nota omninò, quod etſi mors tollat pœnam, tamen poteſt Hæres defuncti pro fama, & honore eius inſtare, vt declaretur ſuper eo crimine; Caball.reſolut.criminal.caſ.298.num.30.*ibi: *Quod licèt mortuo delinquente ſit extinctum crimen quoad perſonam ipſius, tamen Hæredes Rei pro eorum intereſſe, & purganda infamia defuncti, poſſunt petere, quod procedatur ad Sententiam, & declaretur defunctum non commiſiſſe delictum*; idemque firmat in *num ſeqq.*

Et quidem non ſine manifeſta ratione, nam ſicuti Fiſco permittitur procedi ad vlteriora in cognitione delicti in vita defuncti perpetrati, vſque ad illius memoriam damnandam, vt ex *Text.in l.6.C.ad l.Iuliam Maieſt. & in l.final. ff.eod.& in §.3.inſtitut.de public. iudic.* aduertunt *Eugen. citat.conſ.21.per tot.D.Canonicus Raynald.dict.cap.2. §.1. verſ. Et quod dictus Reus, & verſ. Et hoc in caſu*; Ita pariter denegari non poteſt D Principali, tamquam Hæredi beneficiato, & Succeſſori eiuſdem Pompiliæ, & Petri Comparini, quin, dum de illius innocentia conſtat, inſtet pro Sententia abſolutoria reportanda, cùm aliàs quilibet admitti poſſit ad defunctum defendendum, vt monet *Gloſ. in cap.Damnationis 24.quæſt.2.& l.Seruum quoque, ff.de procur.Penia ad Emericum in direct.Sac.Inquiſit.part.3. comment.92.verſ.Hæc accuſatio, & verſ.Ne quis autem, Decian.tractat.crimin.tom.1.lib.5.cap.57.num.10. D.Canonicus Raynald.citat.cap.2.§.1.num.75.verſ.Et hoc in caſu, circa med.*

Nec ad huiuſmodi Sententiam retardandam iterum allegari meretur fuga per dictam Pompiliam capta in ſocietate D. Canonici Caponſacchi, cum quo in Hoſpitio Caſtri Noui Carceribus mancipata fuit; vltra quod enim pro ea remouenda ſufficeret allegare Iudicatum huius Illuſtriſs. Congregationis emanatum ſub die 18. mentis Februarij proximè præteriti aduersùs Guidonem Franceſchinum, per quod fuit publicè morti traditus ſub die 22. ſubſequenti, non obſtante, quod ad pœnam Vxoricidij euadendam vnicè inſiſteret ſuper aſſerto Adulterio, quod ex prædicta fuga ab eius domo reſultare prætendebatur, ceſſat quæcumque inhoneſtatis ſuſpicio ex defenſionibus tunc factis, & ex ipſo Proceſſu de juſtiſſima cauſa apparet, propter quam miſerrima Vxor huiuſmodi fugam à domo Viri arripere conata fuit, non quidem ex cauſa explendæ libidinis cum aſſerto Amaſio, ſed vt ad proprios lares remearet, ibique, & apud Parentes tutam, & honeſtam vitam viueret; Quam ſanè cauſam optimè præſeferunt, nedum notiſſima iurgia ſtatim exorta poſt acceſſum ad Ciuitatem Aretinam vnà cum Petro, & Violante de Comparinis in exequutionem conuentionis in capitulis Matrimonialibus inſertæ. propter angustiam rei familiaris, itaut coacti fuerint poſt paucos menſes Vrbem repetere, non ſine maximo mœrore ob deceptionem detectam, vt conſtat ex epiſtolis Abbatis Pauli Franceſchini, querimonias ex dicta deceptione reſultantes præſupponentibus, & ſignanter ex illa ſcripta 6. Martij 1694. ibi: *Torno à ſcriuere à V. S. che non voglio imitarlo nel modo di ſcriuere, non eſſendo da par ſuo ſeminar certe parole nelle lettere, che meriterebbero riſpoſte di fatti, e non di parole, e queſte ſono offenſiue à ſegno, che le conſeruo per ſuo rimprouero, e ſua mortificatione*, & infra, ibi: *Che ſe lei ci darà de' guai (che non credo mai) non ne reſterebbe eſente, nè pur lei*; & ex aliis epiſtolis recenſitis in præterita Informatione, & ſignanter §. *Videns igitur, cum ſequen.*, quæ licèt qualitatem altercationis non oſtendat, attamen dum D. Abbas Paulus non exhibuit litteras eidem ſcriptas, maximè contra eumdem vrget præſumptio, querimonias fuiſſe iuſtas, & cauſam, ob quam conquerebatur, & altercabantur, fuiſſe veram, vt in proximis terminis firmauit *Rot.*

in Romana, ſeu Neapolitana Liberationis à Moleſtijs 27. Februarij 1690. §. Eò magis, coram Eminentiſs. Archiepiſcopo Mediolanen. & in Romana Pecuniaria ſuper Exhibitione 21. Junij 1694. §. Clariùs, coram R. P. D. Muto.

Verùm etiam acerrima lis mota per Petrum Comparinum ſuper nullitate conſtitutionis Dotis, & probationis ſuppoſitionis partus factæ per Violantem Matrem, tam ad decipiendum Virum, quàm ad arcendos Creditores, qui de eo tempore valde vrgebant, & cùm Dos comprehenderet omnia bona, & integrum Comparini Patrimonium non exigui valoris, inſpecta qualitate perſonarum, mota per Socrum controuerſia ſuper conſiderabili quantitate, quæ, vt paſſim experientia docet, implacabilia odia, & grauiſſimas inimicitias parere ſolet, vt tradunt *Grammat. conſ. 46. num. 4. Crauett. conſ. 75. num. 11. Soccin. Iunior conſ. 73. num. 14. vol. 2. Decian. tractat. crimin. lib. 3. cap. 25. num. 56. Vermigliol. conſ. 321. num. 5. Farinace. quæſt. 49. num. 2.* Huiuſmodi effectum in infelicem Vxorem peperit, itaut Coniugalis amor iamdiù præcedentibus altercationibus turbatus, penitus extinctus remanſerit, ita, & taliter, vt ipſa pluries in propriæ vitæ diſcrimine propter Viri ſeueritatem, aliquando contumelijs, & aliquando igneo breuiori ſclopulo eam perſequentis, ſe conſtitutam viderit, quę ſanè pericula ſicuti dubitari nequit, quin ſint aptiſſima ad incutiendum metum in quemlibet conſtantem Virum, vt monent *Alex. conſ. 156. numer. 4. libr. 5. Cepoll. conſ. 2. num. 5. Pariſ. conſ. 60. num. 3. lib. 4. Maſcard. de probat. lib. 2. concluſ. 1051. num. 49. Menoch. de præſumpt. lib. 3. præſumpt. 4. num. 8. Boer. deciſ. 100. num. 13. Rot. poſt ſecund. vol. conſ. Farinac. deciſ. 260. num. 10. & 11.* ita multò magis id affirmandum venit in Franciſca Pompilia puella teneræ ætatis, omni prorſus auxilio deſtituta, extra proprios lares, & abſentibus Parentibus, vt tradunt *Menoch. conſ. 1. num. 290. lib. 1. Crauett. conſ. 114. num. 3. lib. 1. Cepol. conſ. 221. num. 4. & 8. Mogolon. de met. cap. 2. §. 6.* vbi quod ſolus viſus armorum, licèt habens eis non vtatur, neque ea euaginet, eſt iuſta cauſa metus productiua, & §. 7. *numer. 15.* vbi Conſanguineorum abſentiam pro metu inducendo conſiderat, *D. Canonicus Raynald. tom. 3. cap. 25. §. 4. num.*

num. 34., vbi quod ſufficit videre ſigna, & actus manifeſtæ voluntatis, vel præparamenta.

Ac proptereà concurrentibus tot releuantiſſimis circumſtantijs, per quas Pompilia mota fuit maritale lectum deſerere fugam arripiendo, prorsùs excluſà remanet quæcumque ſuſpicio inhoneſtatis, & coniugalis violatæ fidei; Quoties enim habemus duas Cauſàs, quarum altera eſt licita, & permiſſa, altera verò iniqua, & abominabilis, ea omninò venit amplectenda, per quam delictum penitus excludatur, vt per *Text. in cap. in pœnis de regul. Iur. & in l. interpretatione* 42. *ff. de pœnis* Monent *Bald. in l.* 1. *num.* 10. *Cod. de ſer. fugit. Cenſal. in l. vnica* §. 1. *num.* 36. *verſ. quod ſi plures extiterint Cauſæ C. ſi quis imperatori Maled.*, *Honded. conſ.* 105. *num.* 60. *lib.* 1. *Crauett. conſil.* 8. *num.* 2. *& conſ.* 319. *num.* 1. *Andreol. contr.* 66. *num.* 24. *Maſcard. de probat concl.* 814. *num.* 8. *vol.* 2. *Conciol. allegat.* 87. *numer.* 24. *Rota Januen. voto* 11. *num.* 5., *& 6. poſt. cenſal. in d. l. vnic.*

Abſquè eo, quòd talis licita Cauſa excluſa remaneat tàm ex Epiſtola per Franciſcam Pompiliam Abbati Paulo ſcripta, in qua grates eidem rependendo, quòd eam Matrimonio coniunxerit cùm eius fratre, genitores inſimulabatur, quod eidem peſſima Conſilia inſinuarent totam domum perdendi, & Vrbem cùm Amaſio repetendi, quodquè per eorum diſceſſum tranquillam, quietamque vitam ducebat; Quàm etiam ex ſocietate Domini Canonici Ioſephi Caponſacchi, cùm quo fugam arripuit, propter quam fuit ipſe in Ciuitate Vetula per triennium Relegatus.

Nàm quoad aſſertam Epiſtolam quicquid ſit, an ſubſiſtat, & veriſimilis exiſtimanda ſit, qualitas per eamdem Pompiliam in ſuis conſtitutis adiecta, quòd ſcilicet Maritus deſignauerit elementa, eaquè ſuper inducto calamo fuerint atramento notata, ex quo ipſa ſcribere neſciebat; Certum eſt, quod ſi ea attentè legatur, impoſſibile omninò erit aſſerere, ipſam æquo animo fuiſſe conſcriptam; Quis enim filialis amoris, & obſeruantiæ erga parentes adeò immemor inueniri poteſt, vt ſibi metipſi perſuadeat teneram puellam tunc temporis decimum quartum ætatis annum non excedentem vt ex fide Baptiſmi data in *Summ.* Fiſci ſecundæ propoſi-

qui negauerant se eſſe rata

tionis Cauſæ *num.* 2., & extrà proprios lares ex proximo diſceſſu Genitorum adhuc mærentem, ac in Domo viri peſſimè habitam, vt præſeferre videntur continuæ querimoniæ, & recurſus nedum ad Reuerendiſs. Epiſcopum, ſed etiam ad Dominum Commiſſarium facti, potuiſſe contrà Genitores dcteſtabilia crimina impingere, ac de eis Mariti fratrem ſibi infenſiſſimum certiorèm facere, niſi, vt ipſamet ingenuè faſſa fuit in ſuis conſtitutis, coacta fuiſſet à virò, cui propter nimiam ipſius ſæuitiam ſæpiſſimè præcedenter expertam abſquè euidentiſſimo mortis periculo reluctare, minimè poterat, quæ ſanè inueriſimilitudo ſicuti eſt apta legentibùs horrorem incutere, ita pariter optimè oſtendit epiſtolam non voluntariè, ſed coactè ſcriptam fuiſſe, vt aduertunt *Farinac. conſ. 22. numer. 34. ante med. lib. 1. & conſ. 60. num. 31. in fine, Cabal. reſolut. crim. caſ. 199. numer. 36.* vbi quòd non eſt admittendum quòd nemo ſanus probaret *Vermigl. conſ. 3. num. 6. & 7.*; Quinimò iſta nimia cautela extorquendi dictam Epiſtolam ab vxore, euidentem arguit in ipſo dolum, eamdemque affectate procuratam fuiſſe, vt ſedaret animum eiuſdem Abbatis Fratris, qui aſſiduis laceſſitus quærimonijs ob mala tractamenta erga vxorem, quotidiè de ijſdem redarguere non ceſſabat d. Guidonem, vt inſimilibus terminis aduertit *Caſſan. ad Conſuet. Burgund. fol. mihi 2. num. 13.*

Quo verò ad Societatem D. Canonici Caponſacchi, ea paritet non videtur apta ad inhoneſtatis maculam conſtituendam; Cùm enim infæliciſſima mulier eſſet prorsùs omni mundano auxilio deſtituta, fruſtraquè auctoritatem Reuerendiſs. Epiſcopi, ac Domini Commiſſarij ad ſe à vitæ diſcrimine liberandam implorauerit, propriæque ætati, ac ſexui non conueniret, vt ſola, vel in ſocietate alicuius vilis Mulierculæ fugam arriperet incautè ſe grauoribus periculis exponendo, prout contingere potuiſſet, ſi per viam ſola deprehenſa fuiſſet, itaùt de ea dici poſſet.

Incidit in Scillam cupiens euitare Charybdim.

Mirum propterea eſſe non debet, ſi D. Canonicum præd. in Comitem aſſumpſit, qui adhunc effectum ſibi propoſitus fuit tàm à D. Canonico de Comitibus, quàm à Domino Gregorio Guillichino Marito Pompiliæ affinitate coniunctis, quos

quos incredibile omninò eſt tali fugæ conſenſiſſe, ſi non agnouiſſent illam omninò neceſſariam ad euadendum mortis periculum, quod imminere infæliciſſimæ mulieri erant optimè conſcij, & ſi de honeſtate, & integritate comitis ſummoperè non fidiſſent; Ideoquè vrgente tali neceſſitate prudens electio minoris mali, quamcumque prætenſæ inhoneſtatis vmbram eliminat, vt tradunt *Bald. in leg. filium num. 1. ff. de his, qui ſunt ſui, vel alieni iuris, & in l. 1. num. 35. C. de ÿs, qui acc. non poſſunt, Menoch. de præſumpt. lib. 6. præſumpt. 54. num. 22. & 23. de arbitr. lib. 2. caſ. 89 num. 23.*

Attento præſertim modo, quo fuga fuit executioni demandata, iter ad Vrbem arripiendo recto tramite, & cum maxima celeritate, quod benè oſtendit, vnicum motiuum fuiſſe vitam in tuto ponere, non etiam eam libidinoſis oblectamentis deturpare; ſi enim hæc fuiſſet Cauſa principalis, profectò, vel non recto tramite Romam appuliſſet, vbi à Cognato, & Parentibus, ſtatim deprehendi potuiſſet, ſed in longinquiores Regiones ſe contuliſſet, vel non cùm tanta celeritate, ſed moram traxiſſet extrà publicam viam, & in loco, in quo, & per Maritum non potuiſſet inueniri, & propriam libidinem ad ſatietatem explere valuiſſet.

Quæ vtiquè maxima inueriſimilitudo, optimè oſtendit veritatem Cauſæ per Mulierem in ſuis conſtitutis adductæ, quod ſcilicet ad Vrbem celeriter ſe contulerat, vt ibi penes proprios Parentes vitam, & honeſtatem in tuto collocaret, ſicuti enim ex veriſimili maximum oritur Indicium culpæ, ità pariter non minor ex inueriſimilitudine oriri debet innocentiæ præſumptio, vt monent *Farinac. conſ. 22. num. 34. & de falſis quæſt. 153. numer. 176. Caball. reſol. crimin. Caſ. 149. numer. 35. Vermigliol. conſ. 31. numer. 5. & conſil. 256. numer. 101. Conciol. reſol. crim. 27. numer. 2.*

Idquè benè ſuadetur ex ingenua proteſtatione facta per Canonicum ipſimet Marito, in actu apprehenſionis in hoſpitio Caſtri Noui illum de huiuſmodi fuga obiurganti ibi — *Sono Galant'huomo, e quello che hò fatto l'hò fatto per leuare tua Moglie dal pericolo di morte* — vt deponit Iacobus quondam Simonis Teſtis Fiſcalis Proc. fugæ fol. 50. exemplo adducto in mea allegatione ſupèr fuga, Scipionis ſcilicet

Affricani, qui cum à ſuis militibus fuiſſet capta pulcherrima Iuuenis Vxor Allucij Principis Celtiberorum, illam marito reſtituendo dixit -- *fuit Sponſa tua apud me eadem, quæ apud Socros ſuos, parenteſque ſuos*, verecundia ſeruata eſt tibi vt *inuiolatum*, & *dignum me*, *tequè dari tibi donum poſſet* -- vt teſtatur *Titus Liuius in ſuis Hiſtoriis lib. 26. fol. mihi 493.*

Et licèt valdè difficile ſit venuſtam mulierem in Societate Cupidi Iuuenis itinerantem honeſtatis decorem ſeruare, id tamen nequaquam eſt impoſſibile, vt præſeferre videntur exempla relata *in eadem mea allegatione* §. *Quidquid dicat*, quibus addo illud Penelopis, de qua cecinit *Ouidius lib. 3. elegiarum*.

Penelope manſit (quamuis Cuſtode Careret)
Inter tam multos intemerata procos.

Præſertim cum Iter non fuerit voluntarium, prout neque Societas D. Canonici, ſed ſolum ad euadendum mortis periculum, vnde concurrente huiuſmodi neceſſitate, inapplicabilis prorſus redditur præſumptio, ex *Ouid. de Arte amandi* deducta, quod.

A Iuuene, & Cupido credatur reddita virgo.

Proùt nec etiam ad petitam Sententiam retardandam, & inhoneſtatis notam inducendam in Franciſca Pompilia, quidquam obſtare videntur quamplures Epiſtolæ in latrina hoſpitij Caſtri Noui repertæ, quæ prętenduntur per eandem conſcriptæ D Canonico propter feruentiſſimum Amorem, quo illum proſequebatur, ſubſiſtunt quippè exceptiones, & reſponſiones in præteritis Informationibus adductæ; Prima ſcilicet, quod non fuerunt recognitæ, nec probata fuit identitas caracteris, & adſit incertitudo, cùm non conſtet, cui fuerint directæ, nec ſit inueriſimile quod confingi potuerint à marito, qui capturæ, & perquiſitioni ſemper adſtitit, & qui forſan ſperabat ex eis faciliùs reſultare poſſe impictum Adulterij crimen, & ſuper quo ſummopere inſiſtebat, vt optatam dotem, & lucrum ſuperlucrari potuiſſet, itaut hæc ſola poſſibilitas in contrarium ſufficiat ad elidendum Jndicium, quod prætenditur ex eiſdem deſumi *Rota coram Ludouiſ. deciſion. 352. numer. 2. coram Manzaned. deciſion. 570. numer. 2. & ſequen. & in recent.*

recent. detiſion. 64. numer 25. pàrt. 17. *recent.* Et ſecunda, quod licèt tales exceptiones non ſubſiſterent, adhuc ex eis inhoneſtatis, & violatæ coniugalis fidei deduci nequit argumentum; Quamuis enim ex litteris Amatorijs reſultare valeat Adulterij inditium, illud tamen in caſu noſtro prorſus eliſum remanet, dum cognoſcitur eas tetendiſſe ad licitum finem, ſcilicet ad alliciendum Canonicum, vt ſibi opem in fuga præſtaret, & vitæ diſcrimen euitaret; tunc enim, ſicuti permiſſus eſt finis, ita quoque permiſſa, & licita exiſtimari debent media, quamuis ſuſpicione non carentia, ea enim non per ſe ſola, ſed propter finem conſiderantur, vt aduertit *Gratian. diſcept. forens. cap. 580. numer.* 8. *Gobb. conſil.* 119. *numer.* 72. Quinimò niſi ex litteris amatorijs implicita fornicationis confeſſio reſultet, non valet ex ipſis Adulterij præſumptio deduci, vt declarando Doctores contrariam ſententiam tuentes monent *Sanchez. de matrim. lib.* 10 *tit. de Diuort. diſc.* 12. *quæſt.* 3. *numer.* 48., eoque relato, *Moller. de Cornut. cap.* 7 *numer.* 24.

Validiſſima præſertim attenta conſideratione tum propriæ continentiæ, tum integritatis eiuſdem Canonici, de quo multum fidebat, & ſperabat, ſecum modeſtè in irinere ſe habiturum, dum ex eiſdem Epiſtolis apparet, aliàs illius licentiam obiurgaſſe ibi -- *E mi merauiglio, che voi, che ſiete tanto caſto, hauete compoſto, e copiate coſe tanto poco honeſte,* & infrà ibi -- *mà io non vorrei, che voi faceſte così in ogni coſa, come hauete fatto in queſti libri, che il primo è ſtato honeſto, e queſt'ottaue tutto il contrario, che voi da tant'honeſto che ſiete, diuentaſte tant'ardito, il che non credo* -- Huiuſmodi enim ſincera obiurgatio, & tenor Epiſtolarum, in quibus nihil inhoneſtatis legitur, optimè oſtendunt, atquè declarant animum Pompiliæ ſcribentis, ac propterea ſicuti verba intelligenda ſunt iuxta intentionem proferentis, ita à pari Epiſtolæ iuxta intentionem ſcribentis veniunt interprætandæ, vt per *Tectum in cap. Intelligentia, & cap. Prætorea de verbor ſignific.* tradunt *Oldrad. conſ.* 9. *numer.* 3. *Surd. conſ.* 431. *numer.* 35. *Molin. de Rit. Nupt. lib.* 3. *quæſt.* 85. *numer.* 50.

Vindicata igitur honeſtate, & pudicitia Pompiliæ à fuga, & Epiſtolis, leuioris ponderis ſunt alia prætenſæ inhoneſtatis indicia, quatenus deducantur ex acceſſu D. Canonici ad eius Domum ad effectum eam alloquendi, ex modo inſidioſo, quo fuga fuit præparata, & exequutioni demandata, mediante ſomnifero viro & domeſticis propinato, mutua deoſculatione in itinere, & ex Condormitione in hoſpitio Caſtri noui, vltrà enim Generalem reſponſionem, quòd de his omnibus nulla concludens affertur probatio, proùt opus eſſet ad conſtituendam Pompiliam de Adulterio Ream, peculiaris vnicuiquè occurrit reſponſio.

Siquidem ingreſſus, & egreſſus de tempore nocturno in domum Franciſcæ non reſultat, niſi ex depoſitione vnius tantum Teſtis, ſcilicet Mariæ Margharitæ de contentis, quæ, cùm duas releuantiſſimas exceptiones patiatur, nempè vnicitatis, & meretricij, eius dictum nullam infamiæ notam irrogare valet, vt reſpectu meretriciæ qualitatis tradunt *Marſil. conſ.* 102. *num.* 9., *Vermigliol. conſ.* 408. *num. primo*, *Crot. de Teſtib. part.* 3. *numer.* 46. *Maſcard. de probat. concluſ.* 1362. *num.* 20., & reſpectu vnicitatis, *Farinac. de Teſtib. quæſt.* 64. *num.* 28., *&* 33., *Vermigl. conſil.* 146. *numer.* 3., *D. Canonicus Ravnaldus in ſintax. rer. Criminal. tom. primo cap. primo* §. 10. *numer.* 118., & cùm talis acceſſus tenderet ad vnicum finem conueniendi ſuper fuga, & ſubtrahendi infælicem Mulierem à nimis proximo mortis periculo, non eſt ad malum finem præſumendus; Quotiès enim conſtat de cauſa expreſſa, ad quam poteſt referri, eaque eſt omninò licita, illicitæ, & criminoſæ non venit tribuendum, vt ex *Textu in l. meritoff pro ſocio* tradit in terminis *Crauet. conſ.* 205. *n.* 7., *&* 8.

Modus verò inſidioſus, quo deuenit ad fugam dicta Franciſca Pompilia, ſomniferum præparando, nedùm Viro, ſed omnibus Domeſticis, vltrà quod non probatur, quatenùs probaretur, potiùs ſagacitatis, quàm inhoneſtatis præberet argumentum, cùm nimis fatua fuiſſet Vxor, ſi fugam abſque huiuſmodi cautela tentaſſet.

Eodemque defectu probationis laborat aſſerta mutua deoſculatio in itinere habita, cùm parum tuta ſit illa, quæ reſultare prætenditur ex vnius viliſſimi Teſtis depoſitione;

Maximè

Maximè dum eius dictum nimis animosum detegitur; deponit quippè vidisse, dum Chisium ducebat velociter nocturno tempore, Franciscam Pompiliam, & Canonicum se mutuò deosculantes non reddita ratione, quod Luna luceret, vel quod adesset aliquod artificiale lumen tenebras depellens, quæ sanè circumstantia, quemadmodum est omninò necessaria in Teste de facto nocturno deponente, ita illius omissio omnem fidem illi adimit, vt monent *Bursatt. consil.* 34. *numer.*6., *Vermigliol. consil.* 74. *numer. primo*, *Giurb. consil. Criminal.*37. *numer.* 41., *Farinacc. quæstion.* 66. *numer.*38. *Polidor. Ripa in tractat. de noctur. tempor. cap.*57. *numer.*7., *D. Canonicus Rainald. tom.primo cap.* 11. §. *S. ad* 13. *numer.* 8. Addita vlteriùs maxima inuerisimilitudine, quod dum Chisium ducebat ea velocitate, vt potiùs volatum, quàm cursum imitaretur, potuerit retrò se voluendo mutuam deosculationem intueri; Magisque augetur talis inuerisimilitudo ex eiusdem Testis dicto, dum deponit duxisse Franciscam Pompiliam, absque eo, quod cognosceret eam esse talem, nisi postquam regrediens Aretium, obuiam habuit Guidonem Francischinum illius Maritum eandem insequentem, ac propterea si eam vidisset deosculari, profectò illicò recognouisset, cùm anteà pluriès illam viderit, eaque sibi fuerit bebè cognita; Ideoque asserendum omninò venit, quod vel tædio Carceris secreti affectus ad ita deponendum coactus fuerit, vel quod, vt verisimilius est, cùm ex velocissimo Chisij cursu contingere potuerit collisio sedentium in eo, crediderit casualem approximationem vtriusque Capitis, & Faciei, tetendisse ad malum finem basia captandi, vndè meritò præsumptio ex eius depositione resultans, fuit in Processu fugæ contempta, quæ aliàs si aliquam ueriſimilitudinem inuolueret, in consideratione habita fuisset.

Tandem longè debilior est præsumptio inhonestatis desumpta ex asserta condormitione in eodem Hospitio Castri Noui, cùm tàm per Pompiliam, quàm per Canonicum fuerit in eorum constitutis constantissimè negata, solumque de ea deponit eiusdem Hospitij Cubicularius Testis vnicus, non quidem de certa scientia, sed præsumptiuè, ex quo illum

illum requiſiuerint de Cubiculo cum vnico lectulo, & quia Dominus Canonicus ingenuè fatetur cauſam, propter quam vnicum lectum parare fecit, vt ſcilicet Franciſca Pompilia, ob eius malam valetudinem, & præcipitoſi itineris incommoditate, parum quieſceret, ipſo ad ipſius cuſtodiam vigilante, talis actus non debet trahi ad cauſam illicitam, vt in terminis monet *Crauett. citat. conſil. 205. numer. 9.*, *& ſeqq.*, vb *numer. 15.*, ait, quod ad humaniorem partem ſemper eſt habenda interpretatio, quamuis rigoroſa videatur, & ſi, vt proſequitur idem Auctor *numer. 20.*, *& 21.* Non ſufficeret ad plenam probationem Adulterij, quod quis repertus ſit ſolus cum ſola, & nudus cùm nuda, & quod Iuuenis inueniatur in Cubiculo clauſo cùm Muliere diſpectoratus, & Caligis ſolutis, quantò minùs talis præſumptio inſurgere valet ex breuiſſima mora in eodem Cubiculo cuſtodiæ cauſa.

Parum refragante, quod Franciſca Pompilia in eius examine occultauerit huiuſmodi moram, aſſerendo ad Hoſpitium peruenisse in Aurora, quoniam, cùm ipſa eſſet optimè conſcia de eius Viri credulitate, id forſan aſſeruit ad prorsùs auertendam violatæ fidei ſuſpicionem, quæ certè oriri potuiſſet, ſi longiorem moram in Hoſpitio traxiſſe falſa fuiſſet; Vndè ſi talem moram non negaſſet, cum circumſtantijs tamen ſeruatam pudicitiam ſuadentibus, nullum præiudicium eidem attuliſſet confeſſio, ità paritèr nec mendacium præiudicare valet, vt tradunt *Marſil. conſil. 15. numer. 15.*, *Bertazzol. conſil. 59. numer. 7. lib. primo*, *Vermigl. conſ. 45. numer. 20.*, *& conſ. 273. num. 7.*, *Farinac. conſ. 192. n. 11. ad med. verſ. tùm etiam*, *& conſ. 222. n. 14.*, *& quæſt. 52. n. 14.*, *& ſeqq.*

Cæterùm quamcumque prætenſæ inhoneſtatis ſuſpicionem prorsùs eliminat aſſertio infeliciſſimæ Mulieris in Articulo mortis emiſſa, poſtquam plura læthalia vulnera per Virum inflicta fuere, quod nunquam coniugali fidei defecerat, vt optimè conſtat ex quamplurimis depoſitionibus Religioſorum Virorum, qui eidem in articulo mortis miniſtrabant, aſſerentium ipſam ſemper à Diuina Clementia exoptantem audiuiſſe, nè pro tali peccato venia concederetur, quæ vtique aſſertio in articulo mortis emiſſa, omnem

nem fidem meretur, cùm nemo in eo ſtatu conſtitutus, præſumatur adeò immemor Salutis æternæ, vt mentiri velit, vt tradunt *Natta conſil. 537. numer. 18. lib. 3. Calder. conſ. 15. tit. de vſur.*, & *Menoch. de præſumption. lib. 5. præſumpt. 5. numer. 3.*, *Farinacc. quæſt. 196. numer. 31.*, *Decian. tract. Crim. lib. 5. tit. de defenſ. Reor. cap. 37. n. 27. Card. de Luc. de Regal. diſc. 119. numer 24*, & *de legat. diſcurſ. 27. num. 10.*

Demùm nullum ſundamentum ad redarguendam præfatæ Franciſcæ Pompiliæ memoriam de inhoneſta vita conſtitui poteſt ſuper aſſerto decreto huius Illuſtriſſimæ Congregationis, per quam condemnatus fuit Dominus Canonicus Caponſacchius in Triennalem Relegationem in Ciuitate Vetula, cum expreſſione deuiationis, ac cognitionis carnalis eiuſdem Franciſcæ Pompiliæ, vltrà quamquod enim, vt admittit ipſemet Fiſcus, me inſtante fuit demandata, licèt non extenſa illius moderatio per Dominos Judices Illuſtriſſimo Domino meo approbante, & ob id in mandato de excarcerando, ſubticendo dicta verba, fuerunt appoſita alia: *Pro Cauſa, de qua in actis.*

Remouetur quæcumque difficultas ex ſola ponderatione, quod tale decretum emanauit, nondùm aſſignatis defenſionibus eidem Franciſcæ Pompiliæ, eaque pœnitùs inaudita, quæ de illo nullam mìnimam notitiam habuit, cum eidem non fuerit notificatum; Quinimò in decreto aſſignationis domus loco Carceris fuit tantùm expreſsa cauſa relatiua ad acta; Vndè eidem obeſse non poterat, tanquam emanatum contrà Tertium ipſa non citata ad *Textum in leg. de vnoquoque, & in leg. ſæpè ff. de re iudic.* firmauit *Rota coram Dunozett. Jun. deciſ. 797 numer. 4.*, & *in recent. deciſ. 392. numer. 5. part. 18. recentior.* Et in terminis quod ſententia lata contrà Adulterum non noceat Adulteræ non citatæ, eſt *Text. in leg denunciaſſe §. vltimo ff. ad leg. Iul. de Adul. ter. verſ. ſi condemnatus*, ibi: *Si condemnatus fuerit, Mulier per eum non eſt condemnata, ſed aget cauſam ſuam &c.* & tradit *Caroc. de exception. except. 97. numer. primo*, & *ſeq.*

Potiſſimum cum modò non agatur de abſoluendo Marito ab vxoricidio, ac inducendo iuſtam cauſam à credulitate inho-

inhoneſtatis Vxoris ex dicto decreto reſultante à pœna *leg. Corneliæ*, illum excuſantem, quo caſu immutatio prædicti Decreti poterat forſan inſeruire de vento, ſed de damnanda memoria Mulieris defunctæ, & de irrogando eidem, ac Familiæ infamiam, quo caſu, ſicuti non poterat contumaciale decretum eidem obeſſe in Vita, ità paritèr, nullum præiudicium afferre valet poſt mortem.

Quare &c.

Antonius Lamparellus Procurator Charitatis.

Et ſic videtur D. Card. Auerij Vrbinaten. Dat. 17 May 1698. contra Congregationem Criminal. pro duas Aſſertiones Adeniquid = pro absolut.

Illuſtriſs. & Reuerendiſs. D.

GVBERNATORE

IN CRIMINALIBVS

SIVE

Excellentiſs. Domino

VENTVRINO

Romana.

PRO

D. Hærede Beneficiato q. Franciſcæ Pompilia olim vxoris q. Guidonis Franciſchini.

CONTRA

Fiſcum, & litis Conſortes.

Facti D. Procuratoris Charitatis.

Romæ, Typis Reu. Cam. Apoſt. 1698.

INSTRVMENTVM

SENTENTIÆ DEFINITIVÆ

Latæ pro reintegratione famæ, & exiſtimationis quondam Franciſcæ Pompiliæ, olim Vxoris quondam Guidonis Franceſchini de Aretio; necnon abſolutoriæ ad fauorem D. Dominici Tighetti vti hæredis beneficiati eiuſdem Franciſcæ Pompiliæ ab omnibus inquietationibus, moleſtationibus, vexationibus, & perturbationibus illatis, & inferri comminatis à Venerabili Monaſterio S. Mariæ Magdalenæ Conuertitarum ad Curſum; vnà cùm Citationibus legitimè executis pro ſeruatione quatuor Terminorum ad docendum de appellatione, illiuſque legitima proſequutione, vt eadem ſententia tranſiret, prout tranſijt, in iudicatum ob non interpoſitam appellationem.

IN DEI NOMINE. AMEN.

ANno Domini milleſimo ſexcenteſimo, nonageſimo octauo, Indictione Sexta, Die verò nona menſis Septembris Pontificatus autem Sanctiſſimi in Chriſto Patris, & D. N. D. Innocentij Diuina Prouidentia Papæ Duodecimi anno eius octauo. Hæc eſt copia, ſiue tranſumptum infraſcriptarum Citationum, & Sententiæ per acta mei factarum, & latæ reſpectiuè, tenoris ſequentis, videlicet.

Illuſtriſſimo, & Reuerendiſſimo D. Gubernatore in Criminalibus.

Citentur infraſcripti exaduerſo principales, & aliàs omni &c. ad comparendum in Congregatione Criminali Die craſtina, quæ erit 19. currentis hora ſolita Congregationis, necnon videndum reiterari omnes, & ſingulos terminos ſubſtantiales malè forſan, nulliter, & indebitè tentos, habitos, atque ſeruandos in vim quarumcumque facultatum, abſolui Inſtantem à cenſuris, quatenus &c. concludendum, concludique videndum in cauſa, & au-

audiendam ſententiam diffinitiuam in forma ad p. d. inſtante D.Dominico Tighetto Hærede Beneficiato quondam Franciſcæ Pompiliæ vxoris quondam Guidonis Franciſchini principali, ſiue &c. Charitas Notarius.

Illuſtriſſimus D. Franciſcus de Gambis Fiſci,& R.C. A. Procurator Generalis.

D. Ioannes Maria Serbuccius Procurator, & Dominus litis effectus q.Guidonis Franciſchini.

D.Franciſcus de Paraccianis Procurator Venerabilis Monaſterij S. Mariæ Magdalenæ Conuertitarum ad Curſum pro omni &c.

Exaduerſo D. Procurat.Fiſcalis Gen.& dixit non poſſe aliquã dari ſententiam niſi ad fauorem Fiſci, & quatenus, &c. inſtat ſibi dari Dubium ad effectum &c., & interim non deueniri ad aliquam expeditionem cauſæ,niſi relata cauſa in plena Congregatione, & de voto Dominorum de illa, ac conſtituto aduerſario in carceribus, citatiſque omnibus intereſſe habentibus alias &c. hac die 18. Auguſti 1698.

Franciſcus de Gambis Fiſcalis Generalis.

Feci perſonaliter contra Fiſcum dicta die, & domi dimiſſa copia contra alios 18.Auguſti 1698. Balatreſius.

Aloyſius Pichius Subſtitutus Fiſcalis Generalis.

Die decima nona Auguſti 1698. Relatione facta comparuit D. Antonius Lamparellus Procurator, & petijt; vt ſupra: ex tunc per Illuſtr. & Excellentiſs. D. Marcus Antonius Venturinus I. V. D. Illuſtriſs. & Reuerendiſs. D. Almæ Vrbis Gubernatoris in Criminalibus Locumtenens ſedens. &c. ſententiauit, prout in cedula, quam præ manibus accepit, vidit, legit, & ſubſcripſit, & ad publicandum mihi Notario tradidit, & conſignauit tenoris &c.& ita &c. præſentibus DD. Antonio Bernardino Piceno, & Antonio Toparino de Caprarola Teſtibus &c.

Pro D. Dominico Tighetto, nomine &c. contra Fiſcum, & litis conſortes.

CHRISTI nomine Inuocato pro Tribunali ſedentes,& ſolũ Deum præ oculis habentes per hanc noſtram definitiuam ſententiam, quam de Iuris peritorum conſilio ferimus in his ſcriptis in cauſa, & cauſis,quæ coràm nobis in prima,ſeù alia veriori verſæ fuerũt, & vertũtur inſtantia inter D.Dominicum Tighettum vtì hæredẽ benenciatum quondam Franciſcæ Pompiliæ vxoris quondam Guidonis Franceſchini de Aretio ex vna,& Fiſcum, ac D. Ioannem Mariam Serbuccium vtì Procuratorem, & Dominum litis effectum quondam eiuſdem Guidonis Franceſchini, necnon Ven. Monaſterium Sanctæ Mariæ Magdalenæ Conuertitarum ad Curſum pro omni ſuo iure, & intereſſe partibus ex altera, de, & ſuper prætenſo Adulterio commiſſo per dictam quondam Franciſcam Pompiliam cum D. Canonico Ioſepho Maria Caponſacchio, rebuſq; alijs in actis cauſę,& cauſarum huiuſmodi

latiùs deductis &c. vigore decreti remissionis causæ facti ab Illustriss., & Reuerendiss. D. Auditore SS. per acta Paschasij, de quo in actis &c. relata causa in Congregatione, & de voto eiusdem dicimus, pronunciamus, declaramus, ac diffinitiuè sententiamus ex nouiter deductis NON CONSTARE DE DICTO PRÆTENSO ADVLTERIO, & propterea memoriam eiusdem Franciscæ Pompiliæ OMNINO' restituendam fore, & esse pristinæ famæ, & existimationi, eumdemque D. Tighettum, nomine, quo suprà, ex hactenus deductis absoluendum, & liberandum fore, & esse ab omnibus, & singulis inquietationibus, & molestationibus, vexationibus, & perturbationibus harum occasione illatis, aut inferri comminatis, prout harum serie restituimus, & respectiuè absoluimus, & liberamus, vt suprà, & pro restituta, & respectiuè absoluto, & liberato haberi volumus, & mandamus, & processum, seù processus quoscumq; desuper fabricatum, seù fabricatos esse abolendum, seù abolendos, proùt abolemus, & cassamus, perpetuum silentium eidem Fisco, & litis consortibus imponendo; & ità Dicimus, pronunciamus, declaramus, ac diffinitiuè sententiamus, non solùm &c. sed & omni &c.

Ità pronunciaui ego Marcus Antonius Venturinus Locumtenens.

Lata hac die 19. Augusti 1698. præsentibus DD. Antonio Bernardino Piceno, & Antonio Toparino de Caprarola Testibus &c.

Illustrissimo Vrbis Gubernatore in Criminalibus, siue Excellentissimo D. Venturino.

Citentur infrascripti ad docendum de Appellatione, eiusque legitima prosequutione primo pro prima ad p. d. Instante D. Dominico Tighetto hærede beneficiato quondam Franciscæ Pompiliæ, olim vxoris qu. Guidonis Francischini principali, siue &c.

Charitas.

D. Ioannes Maria Serbuccius vti Procurator, & Dominus litis effectus dicti qu. Guidonis Franceschini exaduerso principalis.

D. Franciscus Paraccianus exaduerso Procurator Venerabilis Monasterij, & Monialium Sanctæ Mariæ Magdalenæ Conuertitarum ad Cursum pro omni &c.

Feci domi d.c. 31. Augusti 1698. Molinellus.

Die prima Septembris 1698. Relatione facta comparuit R.D. Alexander Cassar Procurator Substitutus Charitatis petijt, & obtinuit, vt supra.

Illustrissimo Vrbis Gubernatore in Criminalibus, siue Excellentissimo D. Venturino.

Citentur Infrascripti ad docendum de appellatione, eiusque legitima prosequutione, 2. pro 2. ad p. d. instante D. Dominico Tighetto Hærede Beneficiato quondam Franciscæ Pompiliæ olim vxoris quondam Guidonis Franceschini principali siue &c.

Charitas.

D. Ioannes Maria Serbuccius vti Procurator, & Dominus litis effectus dicti quond. Guidonis Franceſchini exaduerſo principalis.

D. Franciſcus Paraccianus exaduerſo Procurat. Ven. Monaſterij, & Monialium S. Mariæ Magdalenæ Conuertitarum ad Curſum, pro omni &c. Feci prima Septembris 1698. Molinellus.

Illuſtriſſimo Vrbis Gubernatore in Criminalibus, ſiue Excellentiſſimo D. Venturino.

Die tertia Septembris relatione facta comparuit R. D. Alexander Caſſar Procurat. Subſtitut. Charitatis petijt, & obtinuit, vt ſup.

Citentur Infraſcripti ad docendum de Appellatione, eiuſque legitima proſequutione 3. pro 3. ad p.d. inſtante D. Dominico Tighetto Hærede Beneficiato quondam Franciſcæ Pompiliæ, olim vxoris quondam Guidonis Franceſchini principali, ſiue &c.

Charitas.

D. Ioannes Maria Serbuccius vtì Procurator, ac Dominus litis effectus dicti quondam Guidonis Franceſchini exaduerſo principalis.

D. Franciſcus Paraccianus exaduerſo Procurator Venerab. Monaſterij, & Monialium Sanctæ Mariæ Magdalenæ Conuertitarum ad Curſum pro omni &c.

Feci tertia Septembris 1698. Molinellus.

Die quarta Septembris 1698. Relatione facta comparuit R. D. Alexander Caſſar Procurator ſubſtitutus Charitatis petijt, & obtinuit, vt ſuprà.

Gubernatore in Criminalibus, ſiue Ecellentiſſimo D. Venturino.

Citentur infraſcripti ad docendum de Appellatione, eiuſque legitima proſequutione 4. pro 4., & vltima dilatione, & decretum &c. ad p.d. Inſtante D. Dominico Tighetto hærede beneficiato quondam Franciſcæ Pompiliæ olim vxoris quondam Guidonis Franceſchini principali, ſiuè &c. Charitas.

D. Ioannes Maria Serbuccius vti Procurator, & D. litis effectus q. Guidonis Franceſchini exaduerſo principalis.

D. Franciſcus Paraccianus vtì Procurator Venerabilis Monaſterij, & Monialium S. Mariæ Magdalenæ Conuertitarum ad Curſum pro omni &c. Feci 4. Septembris 1698. Balatreſius.

Diè 5. Septembris 1698. Relatione facta comparuit R. D. Alexander Caſſar Procurator Subſtitutus Charitatis petijt, & obtinuit, vt ſuprà.

Quam quidem Copiam ego Dominicus Barloccius Curiæ Cauſarum Criminalium Tribunalis Illuſtriſs., & Reuerendiſs. D. Almæ Vrbis Gubernatoris pro Charitate Notarius, licèt per alium mihi fidum ex ſuis propijs originalibus extractã, cum quibus facta collatione concordare inueni ſalua ſemper &c. in fidem præmiſſorum ſubſcripſi, & publicaui requiſitus.

Loco ✠ ſigni prædicti Notarij.

The life in me abolished the death of things,
Deep calling unto deep: as then and there
Acted itself over again once more
The tragic piece.

* * *

our human speech is naught,
Our human testimony false,

* * *

it is the glory and the good of Art,
That Art remains the one way possible

* * *

Of speaking truth,
But Art,—wherein man nowise speaks to men,
Only to mankind,—Art may tell a truth
Obliquely, do the thing shall breed the thought,

* * *

So may you paint your picture, twice show truth,
Beyond mere imagery on the wall,

* * *

So write a book shall mean beyond the facts,
Suffice the eye and save the soul beside.

TRANSLATION

A Setting-forth[2]

of the entire Criminal Cause

against

GUIDO FRANCESCHINI, Nobleman of Arezzo,

and his Bravoes,

who were put to death in Rome,

February 22, 1698,

The first by beheading, the other four by the gallows.

ROMAN MURDER-CASE

In which it is disputed whether and when a Husband may kill his Adulterous Wife without incurring the ordinary penalty.

TRANSLATOR'S NOTE

The foregoing reproduction of the Old Yellow Book will suffice for those readers of Browning who are conversant with Italian and Latin. It has seemed well, however, to provide a translation for the rest of his public. The work of translation has been conditioned and guided by the nature of the original volume. Much of it consists of legal argumentation. Its technicality, its unusual type of professional logic, its shrewd sophistries can not be made pleasant reading. Its very terminology is without counterpart in literary English, and at times even in the phrase of the English and American lawcourts. These terms have usually been anglicized (Browning's own practice in such cases) rather than translated. The scope of the present volume does not admit of their explanation for the lay reader. The sophistries of the lawyers are couched in an intricate and elaborate style, and their periods of argumentation have necessarily been broken up before they could be reduced to intelligible English idiom. Professional mannerisms in the introduction of new points of law and of argument, or in the citation of authorities, have been rendered freely. The citations themselves are untranslatable and are therefore omitted. Frequent typographical errors have been corrected in translation only, which will sufficiently indicate the editor's emendations. The punctuation of the original is so bad that it has frequently been ignored. The problem of translation has been rendered the more difficult by the barbarity of the syntax, idiom and diction of the original. Certain Italian colloquialisms are shrouded in obscurity. The love letters, owing to their fragmentariness and studied innuendo, are at times unintelligible. Under these limitations, arising from the nature of the Book, the translator has endeavored to give a faithful but not a servile translation.

C. W. H.

Bracketed, heavy-faced Roman numerals [xiii] indicate the page numberings of the original book in the photo-reproduction. The bracketed word [Citations] is used to indicate the omitted citations referred to above. Brackets elsewhere indicate additions made to the original text for the sake of clearness.

The superior figures interspersed through the text refer to the appropriate notes in the corpus of detailed annotation.

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[v] FEBRUARY 15, 1697 A. D.

Attestation by me undersigned how, in the order of the affairs of the Governors, which are set before His Serene Highness, in the Chancery of the Illustrious Signori Auditori of the Criminal Court of Florence, there appears among other affairs of business, under decision 3549, the following of tenor as written below, that is

Arezzo against

1. Gregorio, son of Francesco Guillichini,[295] not described.
2. Francesca Pompilia Comparini, wife of Guido Franceschini,[294] and
3. Francesco, son of Giovanni Borsi called Venerino,[205] servant of Agosto, Host at the " Canale."

because the second Accused, against her honor and conjugal faith, had given herself up to dishonest amours with the Canon Giuseppe Caponsacchi and with the first Accused, who instructed her, as you may well believe, to part from the aforesaid City of Arezzo, the evening of April 28,[184] 1697. And, that they might not be discovered and hindered, the second Accused put a sleeping-potion and opium [196] in her husband's wine at dinner. At about one o'clock [187] the same night, the said Canon Caponsacchi and the first Accused conducted the aforesaid second Accused away from the home of her husband. As the gates of the city were closed [189] they climbed [190] the wall on the hill of the Torrione; and having reached the " Horse " Inn [191] outside of the gate San Clemente, they were there awaited by the third Accused with a two-horse carriage.[192] When Canon Caponsacchi and the second Accused had entered into the said carriage, the word was given by him, the aforesaid first Accused, and they set out then upon [vi] the way toward Perugia,[193] the said third Accused driving the carriage as far as Camoscia. And while they were traveling along the road they kissed [206] one another before the very face of the third Accused.

Still further, the second Accused, along with the first Accused and Canon Caponsacchi, carried away furtively [201] from the house of the said Guido, her husband, from a chest [200] locked with a key, which she took from her husband's trousers [the following articles]: About 200 scudi in gold and silver coin; an oriental pearl necklace worth about 200 scudi; a pair of diamond pendants worth 84 scudi; a solitaire diamond ring worth 40 scudi; two pearls with their pins, to be used as pendants, 6 scudi; a gold ring with turquoise setting worth 2 scudi; a gold ring set with ruby worth 36 scudi; an amber necklace worth 5

scudi; a necklace of garnets alternated with little beads of fine brass worth 6 scudi; a pair of earrings in the shape of a little ship of gold with a pearl worth 16 scudi; two necklaces of various common stones worth 4 scudi; a coronet of carnelians with five settings and with a cameo in silver filigree worth 12 scudi; a damask suit with its mantle, and a petticoat of a poppy color, embroidered with various flowers, worth 40 scudi; a light-blue petticoat, flowered with white, worth 8 scudi; two vests to place under the mantle worth 2 scudi; a pair of sleeves of point lace worth 20 scudi; another pair of sleeves fringed with lace worth 5 scudi; a collar worth 4 scudi; a scarf of black taffeta for the shoulder with a bow of ribbon worth 8 scudi; an embroidered silk cuff worth 14 scudi; two [vii] aprons of key-bit pattern with their lace worth 12 scudi; a pair of scarlet silk boots worth 14 scudi; a pair of woolen stockings, a pair of white linen hose, and a pair of light-blue hose, worth 5 scudi; a snuff-colored, worsted bodice with petticoat, ornamented with white and red pawns, worth 3 scudi; a blue and white coat of yarn and linen, adorned with scarlet and other colored ornaments, worth 10 scudi; a worsted petticoat of light-blue and orange color, striped lengthwise, with yellow lines and with various colors at the feet, worth 14 scudi; an embroidered petticoat worth 9 scudi; a silk cuff worth 5 scudi; four linen smocks for women worth 14 scudi; a pair of shoes with silver buckles worth 8 scudi; many tassels and tapes of various sorts worth 14 scudi; six fine napkins worth 7 scudi; a collar of crumpled silk worth 7 scudi; two pairs of gloves of a value of 4 scudi; four handkerchiefs worth 5 scudi; a little silver snuff-box with the arms of the Franceschini house upon it worth 16 scudi; a coat of her husband Guido, rubbed and rent by the lock of a chest where he kept part of the aforesaid clothing. And they had converted the whole to their own uses against the will of the same, the first Accused and Canon Caponsacchi having scaled the walls [190] of the city in company with the second Accused, as soon as she had committed adultery with them. And the said third Accused had given opportunity for flight to the said second Accused along with the Canon, in the manner told.

Therefore the Commissioner [226] of Arezzo was of opinion to condemn arbitrarily the first Accused to five years' confinement [295] at Portoferrio with the penalty of the galleys for the same length of time, not counting the reservation of fifteen days to appear and clear himself; to condemn the second Accused to the penalty of the Stinche [294] for life and to the restitution of what was taken away, with the abovesaid reservation; and that the third Accused be not prosecuted further and be liberated from prison [viii]. But the Criminal Court was of opinion that the first Accused should be condemned to the

galleys during the pleasure of His Serene Highness, with the said reservation. As to the second Accused, who was imprisoned here in Rome, in a sacred place, it suspended the execution. And for the third, who had done no voluntary evil, it gave up further inquiry.[208]

Again proposed in the said business before His Serene and Blessed Highness with the signature of December 24, 1697.[296]

The opinion of the Court stands approved.

In sign of which

I, JOSEPH VESINIUS, J. V. D., an official
in the criminal court of Florence,
etc., in faith whereto, etc.

[ix] Romana Homicidiorum.[366]

[Pamphlet 1.]

Most Illustrious and Most Reverend Lord Governor:

Count Guido Franceschini, born of a noble race, had married, under ill [458] [463] omen, Francesca Pompilia, whom Pietro and Violante had asserted (even to one occupying a very high office) to be their own daughter. After a little while, she was taken to Arezzo, the country of her husband, along with her foster-parents,[94] and was restrained from leading her life with utter freedom.[515] Yet she has made pretense that she was hated on the pretext of sterility, as is clearly shown in her deposition during her prosecution for flight from her husband's home. [Cf. p. lxxxv.] Both she and her parents took it ill that they were denied their old free life, and they urged their daughter to make complaint before the Most Reverend Bishop,[139] saying that she had been offered poison by her brother-in-law.[51] At the departure of this couple, when they were about to return to the City, they most basely instigated her—yes, and even commanded her by her duty to obey them—that she should kill her husband, poison her brother-in-law and mother-in-law, and burn the house; and then with the aid of a lover to be chosen thereafter, she should put into effect her long-planned flight back to the City. (But all this should be done after their departure, lest they might seem to have given her evil counsel.) [Such facts] may be clearly deduced from one of the letters [112] presented as evidence in the same prosecution.

When these pseudo-parents had returned home,[100] they declared that Francesca was not born of themselves,[103] but had been conceived of an unknown father by a vile strumpet.[105] They then entered suit before A. C. Tommati [262] for the nullification of the dowry contract.[260]

Day by day the love of Pompilia for her husband kept decreasing while her affection for a certain priest was on the increase. This affair went so far that on an appointed night, while her husband was oppressed with sleep (and I wish I could say that she had no hand in this, and had not procured drugs [196] from outside), she began her flight from her husband's house toward Rome, nor was this flight without theft of money [200] and the company of her lover. Her most wretched husband pursued them,[202] and she was imprisoned not far from the City. Then, when after a short time they were brought to trial, the lover was banished [271] to Civita Vecchia for adultery, and she herself was placed in safekeeping.[276] But owing to her pregnancy [283] she returned to the home of Pietro and Violante, where she gave birth to a child [299] (and I wish I could say that it had not been conceived in adultery [302]). This

increased the shame and indignation of the husband, and the wrath, [x] which had long been stirred, grew strong, because his honor among upright men was lost and he was pointed out with the finger of scorn,[257] especially in his own country, where a good reputation is much cherished by men who are well-born. Therefore his anger so impelled the luckless man to fury,[306] and his indignation so drove him to desperation, that he preferred to die rather than to live ignominiously among honorable men. With gloomy mind, he rushed headlong to the City,[314] accompanied by four companions. On the second night [319] of the current [365] month of January, under the show of giving a letter from the banished lover,[321] he pretended to approach the home of the Comparini. When at the name of Caponsacchi the door was opened, he cut the throats of Violante [323] and Pietro, and stabbed Francesca with so many wounds that she died after a few days.

While this desperation continued, his dull and unforeseeing mind suggested no way to find a place of safety.[334] But accompanied by the same men, he set out for his own country along the public highway by the shortest route. Then, while he was resting upon a pallet [341] in a certain tavern,[340] he was arrested together with his companions by the pursuing officers.

Great indeed is this crime, but very greatly to be pitied also, and most worthy of excuse. Even the most severe laws give indulgence and are very mild toward husbands who wipe out the stain of their infamy with the blood of their adulterous wives. [Citations.]

This indeed was sanctioned in the laws of the Athenians and of Solon [379] (that is, of the wisest of legislators), and what is more, even in the rude age of Romulus,[381] law 15, where we read:

"A man and his relatives may kill as they wish a wife convicted of adultery." [Citations.]

I hold to begin with, that there can be no doubt of the adultery of the wife [for several reasons]. [First], her flight together with her lover during a long-continued journey. [Citations.]

[xi] [Second], the love letters [232] sent by each party; these can not be read in the prosecution for flight without nausea. [Citations.]

[Third], the clandestine entry [170] of the lover into her home at a suspicious time. [Citations.]

[Fourth], the kisses [206] given during the flight (p. 100) [532] according to the following sentiment: "Sight, conversation, touch, afterwards kisses, and then the deed [adultery]." [535] [Citations.]

[Fifth], their sleeping in the same room [215] at the inn. [Citations.]

[Sixth], the sentence of the judge,[271] who condemned the lover for his criminal knowledge of her, which made this adultery notorious. [Citations.]

Furthermore [478] we are not here arguing to prove adultery for the

purpose of demanding punishment [upon the adulteress], but to excuse her slayer, and for his defense; in this case, even lighter proofs would be abundant, as Matthæus advises. [Citations.]

These matters being held as proved, there does not stand in our way the opinion of those who assert that a husband is not excusable from the ordinary penalty, who kills his adulterous wife after an interval, on the ground that the aforesaid laws speak of the wife who has been found in her guilt, and has been killed incontinently,[405] and hence should not be extended to wife-murder committed after an interval, since the reins should not be relaxed for men to sin, and to declare the law for themselves. [Citations.]

[xii] Furthermore, Farinaccius does not affirm this conclusion, but shows that he is very much in doubt, where he says: "The matter is very doubtful with me, because injured honor and just anger—both of which always oppress the heart—are very strong grounds for the mitigation of the penalty." Matthæus well weighs these words on our very point. And both Farinaccius and Rainaldus conclude that the penalty can be moderated at the judgment of the Prince.

I humbly pray [452] that this be noted. The aforesaid laws, which seem to require discovery in the very act [343] of sin, as some have thought, do not decide in that way merely for the purpose of excusing a husband moved to slaughter by a sudden impulse of wrath and by unadvised heat. But they so decide lest on any suspicion of adultery whatsoever, oftentimes entirely without foundation, men should rush upon and kill their wives, who are frequently innocent. Hence the " discovery in the very act of crime," which is required by law, is not to be interpreted, nor to be understood, as discovery in the very act of license, but is to be referred to the proof of the adultery, lest on trifling suspicion a wife should be given over to death. But when the adultery is not at all doubtful, there is no distinction between one killing immediately and killing after an interval, so far as the matter of escaping extreme punishment is concerned. [Citations.]

For whenever a wife is convicted of adultery, or is a manifest adulteress, she is always said to be " taken in crime." [Citations.]

And in very truth the reasons adduced by those holding the contrary opinion are entirely too weak. For murder committed for honor's sake is always said to be done immediately,[405] whensoever it may be committed. Because injury to the honor always remains fixed before one's eyes, and by goading one with busy and incessant stings it urges and impels him to its reparation. [Citations.]

[xiii] Such relaxation of the reins to husbands, for taking into their own hands the law, would indeed be too great if the law of divorce were still valid. For in that case husbands would not be permitted to make such reparation of their honor. For another way would be

satisfactorily provided for them, namely, in their right to dismiss and to repudiate the polluted wife. In this way they could put far from themselves the cause of their disgrace, yes, and the very ignominy itself. But when by the divine favor our Gentile blindness was removed, and matrimony was acknowledged to be perpetual and indissoluble, those were indeed most worthy of pity who, when all other way of recovering their honor was closed to them, washed away their stains in the blood of their adulterous wives. Petrus Erodus [Citation], after he has discussed a matter of this kind according to the usual practice of Roman Law, adds in the end: " For as all hope of a second marriage is gone so long as the adulteress still lives, we judge that such very just anger is allayed with more difficulty, unless it be by the flight of time "; and therefore such a case, when not terminated by divorce, is usually terminated by murder. For as Augustine says, " what is not permitted, becomes as if it were permitted; that is, let the adulteress be killed, that the husband may be released."

I acknowledge that it is laudable to restrain the audacity of husbands, lest they declare the law for themselves in their own cause; since they may be mistaken. But it would be more laudable indeed to restrain the lust of wives; for if they would act modestly and would live honorably they would not force their husbands to this kind of crime, which I may almost call necessary. Nor can we deny that by the ignominy brought upon them by the adultery they are exasperated and are driven insane, and a most just sense of anger is excited in their hearts. For this grievance surpasses all others beyond comparison, and hence is worthy of the greater pity, according to the words of the satirist [Juv., x, 314]: " This wrath exacts more than any law concedes to wrath."

Papinian also well acknowledges this [Citation] where we read: " Since it is very difficult to restrain just anger." For these reasons, authorities hold that a just grievance should render the penalty more lenient even in premeditated crimes; because the sense of " just grievance does not easily quiet down, or lose its strength with the flight of time, but the heart is continually pierced by infamy, and the longer the insult endures, the longer endures the infamy, yea, and it is increased." [Citations.]

[xiv] And this drives one on the more intensely, because with greater impunity, as I may say, wives pollute their own matrimony and destroy the honor of their entire household. In ancient times,[400] while the *Lex Julia* was in force, wives who polluted their marriage-bed underwent the death penalty. [Citations.]

Likewise it was so ordained in the Holy Scriptures; for adulterous wives were stoned to death, Gen. 38; Lev. 20: 10; Deut. 23: 22; Ez. 16.

The solace drawn from the public vengeance quieted the anger and destroyed the infamy. Then the husband, who was restored to his original freedom, could take a new and honest wife and raise his sons in honor. But now, in our evil days, there is a deplorable frequency of crime everywhere, as the rigor of the Sacred Law has become obsolete. And since wives who live basely are dealt with very mildly, the husband's condition would indeed be most unfortunate if either he must live perpetually in infamy, or must expiate her destruction, when she is slain, by the death penalty, as Matthæus well considers. [Citation.]

Therefore, when it is claimed that the husband shall escape entirely unpunished, it is necessary that the wife be killed in the very act of discovered sin. But when the question is as to whether or not a husband may be punished more mildly than usual when driven to wife-murder for honor's sake, it makes no difference whether he kill her immediately [405] or after an interval. [Citation.]

Nor does this opinion lack foundation in the very Civil Law of the Romans, for Martian [Citation] asserts that a father who had killed his son while out hunting, because he had polluted his stepmother with adultery, was exiled. Nor had the father found him in the very act of crime, but slew him while out hunting, that is with a pretense of friendliness and by dissimulating his injury. Accordingly he was punished, but not with the usual penalty; for he had killed his son, not in his right as a father, but in the manner of a robber. Hence we can infer that not the killing, but the method of killing was punishable, as we may deduce from Bartolus. [Citations.]

[xv] Still further,[404] it is well worthy of consideration that one may kill an adversary with impunity, for the sake of his personal safety, but he must do so immediately and in the very act of aggression, and not after an interval. For the life of one slain may not be recovered by the slaying of the murderer. Accordingly, whatever violence may follow upon the first murder becomes vengeance, which is hateful and odious to the law; for the jurisdiction of the judge is insulted by depriving him of the power of publicly avenging murder. But if by the death of the slayer the one slain could be called back to life, I think there is no doubt that anyone could kill the said slayer; for then such an act would not be revenge, but due defense, leading toward the recovery of the life that had been lost. But even when we are dealing with an offense and injury which does not affect the person of the one injured, it is likewise permitted that one who has been robbed may, even after an interval, kill the thief for the recovery of the stolen goods, provided every other way to recover them is precluded. Likewise, one offended in his reputation should be permitted at all times to kill the one injuring him; for such an act may be termed, not the avenging of an injury, but the reestablishing of wounded honor, which could be healed in no other way. [Citations.]

Furthermore,[404] as I have said, when one is discussing the subject of self-defense, he is dealing with an instantaneous act; hence the anger conceived therefrom ought to quiet down after a while, according to the warning of St. Paul,[383] Eph. 4: "Let not the sun go down upon your wrath." But when we are dealing with an offense that injures the honor, this is not merely a momentary matter, but is protracted, and indeed with the lapse of time becomes the greater, as the injured one is vilified the more. Therefore, whensoever the murder follows, it is always said to have been committed immediately. [Citation.]

Relying upon these and other reasons, most authorities affirm that a husband killing his adulterous wife after an interval, but not found in licentiousness, is to be punished indeed, but more mildly and with a penalty out of the ordinary. [Citations.]

[xvi] Caballus testifies that this has been the practice in many of the world's tribunals. Calvin gives other cases so decided. [Citation.] And Cyriacus, who speaks in worse circumstances, adduces numerous other cases, and the authorities recently cited offer many more.

This lenient opinion is the more readily to be accepted because, as I claim, the deed about which we are arguing does not also carry with it (as the Fisc holds) attendant circumstances demanding such a rigorous penalty.

[First] the taking of helpers[409] to be present at the murders [is not such a circumstance]; because he could lawfully use the help of companions to provide more safely for his own honor by the death of his wife. [Citations.]

[Secondly] the crime is not raised to a higher class because he led with him helpers at a price[316] agreed upon; for what is more, and is far more to be wondered at, a husband can lawfully demand of others the murder of an adulterous wife, even by means of money, as the following indisputably affirm. [Citations.]

[xvii] Likewise it does not at all disturb [our line of argument] that Count Guido might have killed his wife and the adulterer when they were caught in the very act of flight at the tavern of Castelnuovo, but that he preferred rather to have them imprisoned,[222] seeking their punishment by law, and not with his own hand. We deny that he could have safely killed both of them, inasmuch as he was alone, nor could he attack them, except at the risk of his own life. Because the lover was of powerful strength,[29] not at all timid, and all too prompt for resisting, since in the word of one of the witnesses in the prosecution for flight, he was called *Scapezzacollo* [cutthroat]. Nor is it credible that, unless he had been fearless and full of spirit, he would have ventured upon so great a crime, and would have dared to participate in her flight, and to accompany the fugitive wife from the home of her husband. And this fact is more clearly deducible from one of his letters

[cf. p. xcviii], in which, after urging Francesca to mingle an opiate in the wine-flasks for the purpose of putting her husband and the servants to sleep, he adds that if they find it out she should open the door; for he would either suffer death with her or would snatch her from their hands. These things indicate both courage and audacity. And though the wife is a woman, that is a timid and unwarlike creature, nevertheless Francesca was all too impudent and audacious, whether because of her hatred for her husband or on account of her anger at the imprisonment of her lover. For she drew a sword [227] upon her husband in the very presence of the officers who were about to arrest her. And to prevent her from going further, one of the bystanders had to snatch it from her hands. Therefore,[407] before their imprisonment, Guido could not put into effect what he had had in mind and what he could lawfully do, because he was alone and his strength was not sufficient. Then when she had been taken to prison, and afterwards was placed in safekeeping, it was impossible for him to vindicate his honor. But when at last she had left the monastery and had gone back to the home of Pietro and Violante, he took vengeance as soon as he could. Therefore we hold that he killed her in the very act,[343] as it were, and immediately. In Sanfelicius [Citation] we read of a case where a husband, though he could have killed his wife immediately, did not do so, but craftily redeemed himself from his disgrace by slaying his wife as soon as possible. And Giurba also speaks of a case where the argument is concerning an injury that was not personal, but real, as was said above.

Guido saw to her capture,[222] and insisted that she be punished, lest she continue her adultery and viciousness, being powerless to do anything else, because his confusion of mind, his helpless fury, and his sense of shame led him unwisely into not taking the law into his own hands and recovering his lost honor. He indeed lodged complaint, but it was because [xviii] he could not kill her. Nor would his ignominy have been wiped out nor his infamy have been destroyed by her imprisonment and punishment. But when indeed after her imprisonment he was still more shut out from noble company,[257] his injury ever became the more acute, and it stimulated him the more strongly to regain his own reputation. But his bitterness of mind was increased especially at hearing that she had gone back to the home of Pietro and Violante, who had declared that she was not their daughter, but the child of a dishonest woman;[105] hence his injury was increased by her staying in a home which he suspected, as is said a little further on. Accordingly the same cause kept urging him after her departure from the monastery, as had done so before her imprisonment and the appeals made by Count Guido.

It makes very little difference [502] that Francesca was staying in the home of Violante, which had been assigned to her as a safe prison [284]

with the consent of Guido's brother.[288] For what would it amount to even if with the consent of Guido himself she had been taken from the monastery (yet we have no word of this matter in the trial). For Guido could [291] make that pretense to gain the opportunity of killing her for the restoration of his honor. Nor would such dissimulation increase the crime, especially to the degree of the ordinary penalty, since it is certain that the husband may kill a wife stained with adultery, without incurring such penalty. Yet a heavier or lighter penalty is inflicted, just as more or less treachery accompanies the murder, as Matthæus testifies it was practiced in the Senate of Matritensis. [Citation.]

Nor is the attendant circumstance of the place [419] assigned as a prison worthy of consideration, as if the custody of the Prince had been insulted; for one is not said to be in custody when he is merely detained in a place under security that he will not leave it. [Citation.] Furthermore, this objection [500] falls utterly to the ground, for the circumstance of such a place [419] does not increase the crime, whenever it is committed by one having provocation or for the repelling of an injury. And Marta holds thus in the more serious case of a crime committed in prison. [Citations.]

Furthermore we do not believe, from what is said above, that the penalty can be increased because of the murder of [401] Pietro and Violante, since the same injured honor [xix], which impelled Count Guido to kill his wife, forced him to kill the said parents. And now may the ashes of the dead spare me if what I have urged above, and what I am about to say, may seem to disturb their peace! Neither the flame of hatred nor the impulse of anger (which are far from me) have suggested these charges; but the demands of the defense, which I have assumed without a penny of compensation,[376] compel me to employ every means leading to the desired end.

I have said, and I think not without due reason, that the Accused sprang forward to the death of both of them, moved simply by an immediate injury to his own reputation. For a few months after the marriage contracted with Francesca, whom they had professed to be their daughter, they had not blushed to declare that she was not such. Hence there is an inevitable dilemma.[289] Either [*first*] she was in deed and truth their daughter, and then we must acknowledge that in afterward denying her parentage they had inflicted the greatest injury upon the honor and reputation of the Accused; for they had conceived strong hatred and malice against him. Hence they did not hesitate to disgrace their own daughter, in order that they might bring upon him the infamy of having married the daughter of a vile and dishonest woman.[105] This is indeed a fact, that whoever knows Count Guido supposes he has married a girl, not merely of rank unequal to his own, but even of the basest condition, and this greatly injures the reputation of his entire household.

Or else [*second*] Francesca was indeed conceived of an unknown father and born of a dishonest harlot.[105] And it can not be denied that in that case he suffered even greater injury, which branded him with a mark of infamy; both because of her birth and from the fact that daughters are usually not unlike their mothers.[106] Cephalus [Citations] where we read: "From such mingling with harlots it is to be supposed that the people become degenerate, ignoble, and burning with lust." And would that experience had not taught us this fact!

The unfortunate man believed he was marrying the daughter of Pietro and Violante, born legitimately, and yet by the contrivance and trickery of this couple he married a girl of basest stock, conceived illegitimately by a dishonorable mother. From this fact alone the quality of those parents can be inferred, who,[490] for the sake of deceiving those [107] lawfully entitled to the trust-moneys, had made most vile pretense of the birth of a child, [xx] entirely unmindful that they laid themselves liable to capital punishment. [Citations.]

It will not therefore be difficult to believe what Francesca reveals in her letter to her brother-in-law,[112] that the abovesaid couple, in spite of the fact that she was well treated, kept instigating her daily to poison her husband, her brother-in-law, and her mother-in-law, and to burn the home. And though these crimes are very base, they gave her still worse counsel, even by her obligation to obey them; namely, that after their departure from Arezzo, she should allure a lover and, leaving her husband's home in his company, should return to the City. In her obedience to their commands, this daughter seemed indeed all too prompt. Who then will deny that such reckless daring, wherefrom a notorious disgrace was inflicted upon the entire household of the Accused, ought to be attributed to the base persuasion of the said couple? Nor was it difficult to persuade that girl to do what she was prone to by inborn instinct and by the example of her mother.[106]

It is not my duty to divine why that couple so anxiously desired the return of Francesca to their home. But I can not persuade myself that they were moved by mere charity, namely, that she might escape ill-treatment. For Francesca, in the said letter, acknowledges that she is leading a quiet life and that her husband and the servants are treating her very well, and that what she had laid before the Bishop had been the falsehood of the said couple.

I know furthermore that if a husband have knowledge of the adultery of his wife and keep her in his home, he can not escape the mark and penalty of a pimp. [Citations.] If therefore, as the said couple declare, Francesca was not their daughter, why did they receive her so tenderly into their home after her adultery was plainly manifest? Why did they, as I may say, cherish her in their breasts, not merely up till the birth of her child, but even till death? And I wish I could

say that her love affairs with the banished [priest] were not continued there![293] For at his mere name,[321] after the knocking at the door, as soon as they heard that some one was about to give them a letter from the one in banishment, [xxi] immediately the door was opened and Guido was given an entry for recovering his honor. If indeed the said couple had been displeased with the adultery of Francesca, they would, without doubt, have shuddered at the name of the adulterer, and would have cut off every way for mutual correspondence. Therefore it is most clearly evident that the cause of wounded honor in the Accused had continued, and indeed new causes of the same kind had arisen, all of which tended toward blackening his reputation.

Nor does it make any difference that the Accused may have had in mind several causes of hatred toward both Francesca and the Comparini. For if these are well weighed, they all coincide with and are reduced to the original cause, namely, that of wounded honor. However that may be, when causes are compatible with one another, the act that follows should always be attributed to the stronger and more urgent and more acute. [Citations.] And on the point that when several causes concur, murder is to be referred and attributed to injured honor, and not to the others. [Citations.]

Therefore I think that any wise man ought to acknowledge that Guido had most just cause for killing the said couple, and that very just anger had been excited against them. This was increased day by day by the perfectly human consideration that he would not have married her unless he had been deceived by that very tricky couple. And to what is said above we may add that either the child born [of Pompilia] was conceived in adultery, as the Accused could well believe, since he was ignorant of the fact that his wife was pregnant during her flight; and then we can not deny that new offense was given to his honor, or the old one was renewed, by the said birth; or the child was born of his legitimate father; and who will deny that by the hiding of the child,[309] Guido ought to be angered anew over the loss of his son? And the great indignation conceived from either cause (the force of which is very powerful) is so deserving of excuse that very many atrocious crimes committed upon the impulse of just anger have gone entirely unpunished. [Citations.] The following text [Citation] agrees with this, " Nevertheless, because night and just anger ameliorate his deed, he can be sent into exile." [Citations.]

[xxii] And not infrequently[491] in the contingency of such a deed, men have escaped entirely unpunished, who, when moved by just anger, have laid hands even upon the innocent. For a certain Smyrnean woman had killed her husband and her son conceived of him, because her husband had slain her own son by her first marriage. When she was accused before Dolabella, as Proconsul, he was unwilling either to

liberate one who was stained with two murders, or to condemn her, as she had been moved by just anger. He therefore sent her to the Areopagus, that assembly of very wise judges. There, when the cause had been made known, response was given that she and her accuser should come back after a hundred years. And so the defendant in a double murder, although she had also killed one who was innocent, escaped entirely unpunished. [Citation.]

Likewise [492] a wife who had given command for the murder of her husband because of just anger from his denial of her matrimonial dues was punished with a fine, and a temporary residence in a monastery, as Cyriacus testifies. [Citation.] Such pleas might indeed hold good whenever the accused had confessed the crime, or had been lawfully convicted, neither of which can be affirmed [in our case]. But much more are they to be admitted, since he confesses [493] only that he gave order for striking his wife's face, or for mutilating it; and if those he commanded exceeded his order, he should not be held responsible for their excess. [Citations.]

His fellows and companions give his name and claim that he had a hand in the murders. And in spite of the fact that the Fisc claims they have hidden the truth in many respects, equity will not allow that certain matters be separated from their depositions and that these be accepted only in part; for if they are false in one matter, such are they to be considered in all. It would be more than enough to take away from those depositions all credence that, under torture in his presence, they did not purge that stain. [Citations.]

[xxiii] It has very justly been permitted that in defense of this noble man I should deduce these matters, as they say, with galloping pen. The scantiness of the time has not suffered me to bring together other grounds for my case; these could be gathered with little labor, and possibly not without utility. Yet I believe that all objections, which can be raised on the part of the Fisc, have been abundantly satisfied.

H. Arcangeli, *Procurator of the Poor.*

By the Most Illustrious and Most Reverend Lord Governor in Criminal Cases:

Roman Murder-case.

On behalf of Count Guido Franceschini, Prisoner, against the Fisc.

Memorial of fact and law.

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

[xxv] Romana Homicidiorum.

[Pamphlet 2.]

Most Illustrious and Most Reverend Lord Governor:

From the " prosecution [for flight]," which was brought in this very tribunal,[270] and by his honor, Lord Venturini, Judge in this present case, there is more than satisfactory proof of adultery committed by Francesca Pompilia, wife of Count Guido Franceschini, a nobleman of Arezzo, with the Canon Caponsacchi. With Caponsacchi the parents of this same Francesca Pompilia entered into conspiracy, although they were living here in the City. And after she had given an opiate [196] to Count Guido and his entire household, she fled that same night from the city of Arezzo toward Rome.

Consequently, the Canon, as may be remembered, was banished to Civita Vecchia, with a statement of his criminal knowledge of that woman in the said decree of condemnation.[271] This adultery is also evident from other matters of evidence deduced by the Procurator of the Poor. There remains, accordingly, no room to doubt it, but rather their adultery may be said to be notorious, here in the City, in the country of Count Guido, and throughout all Etruria.

Since this is established, we can safely assert that even if Guido had confessed that he slew his wife with the complicity and help of Blasio Agostinelli of the town of Popolo, Domenico Gambassini of Florence, Francesco Pasquini of the castle of Monte Acuto, and Alexandro Baldeschi of Tiferno, he should not therefore be punished with the ordinary death penalty, but more mildly. This is in accord with the decision of Emperor Pius as related by Ulpian [Citation] and by Martian. [Citation.] For in both of them it is said that a man of low birth is sent into perpetual exile, but that a noble is banished only for a limited time; but the crime of a husband who is moved by just anger is overlooked, as this same Ulpian confirms. [Citation.] Since it is most difficult to restrain such anger. [Citation.]

[xxvi] Yet we should not consider it necessary that the adultery of the wife be conclusively proved (as it really is) in order that there be room for mitigating the said penalty. For it would be enough, if we were dealing with a case of mere suspicion: Glossa, etc. " A man who had killed his son because he believed the young man had lain with his stepmother, as was true, was deported to an island." [Citations.]

Dondeus also speaks of a man who had boasted that he wished to ruin the sister of the one who killed him, which is said to have aroused just suspicion and fear for the loss of honor sufficient to free the slayer from the ordinary penalty of murder. [Citations.]

Nor is it true, as some authorities affirm, that the husband must take the wife in very adultery, and kill her immediately;[405] in which case they say the abovesaid laws hold good, but that it is otherwise if the murder is done after an interval. [Citations.] [xxvii] For the contrary opinion is the truer, the more usual, and the one to be observed in practice, as Marsilius well advises, where he speaks in defense of a certain nobleman who had killed another person after an interval. The man slain had betrothed his sister by promise and had kept her for three months, and had then rejected her. Because of this, a great injury and much infamy were inflicted upon his family and the entire kin. Marsilius then adduces the abovesaid laws, which pronounce concerning a husband who kills his adulterous wife; and Bertazzolus offers the case of one who had killed his adulterous wife and had afterward, in his own defense, proved the adultery by the double confession of the same wife. Claudius Jr. testifies that the murderer was banished for a time by the prætor of Mirandola, and after the lapse of several months he was recalled by the Duke of Mirandola. [Citations.]

Afflicti cites the decree of the kingdom, beginning *Si Maritus,* which concedes impunity to a husband who kills his wife and the adulterer both, in the very act of adultery and without any delay. He then says that if both of these requisites are not present, the husband is excused in part, but not entirely; and so is punished more mildly. And in No. 2 he gives the reason; because whenever one commits a crime, under impulse of just anger, the penalty should be somewhat moderated, according to the aforesaid text. [Citations.]

Matthæus [Citation] adduces the excellent words of Theodoric [384] as quoted by Cassiodorus [Citation], where we read: "For who can bear to drag into court a man who has attempted to violate his matrimonial [xxviii] rights? It is deep-seated even in beasts that they should defend their mating even with deadly conflict, since what is condemned by natural law is hateful to all living creatures. We see bulls defending their cows by strife of horns, rams fighting with their heads for their wethers, horses vindicating by kicks and bites their females; so even these, who are moved by no sense of shame, lay down their lives for their mates. How then may a man endure to leave adultery unavenged, which is known to have been committed to his eternal disgrace? And so if you have made very little false statements in the petition you offer, and if you have indeed only washed away the stain to your marriage-bed by the blood of the adulterer, taken in the act, and if you are looking back from your exile, which was evidently inflicted not by reason of a bloodthirsty mind, but because of your sense of shame, we bid you return from your exile; since for a husband to use the sword for the love of his sense of honor is not to overthrow the laws, but to establish them." [402]

Dondeus says this interpretation is clearly proved by the authority of a glossa in the chapter: *Ex litterarum.* [Citation.] For in the text, when these words are used: " your wife taken in adultery," a glossa explains the word " taken " as equal to " convicted." Marta says this opinion is much more just and equitable, and is commonly held. And Muta in the end offers a decision of the supreme court of the kingdom, by which a husband was condemned to the galleys for seven years.[395] This was on account of the accompanying circumstances; for he had had his wife summoned outside of the city walls by his son, and there had killed her; and afterward her body was found to have been devoured by dogs. Dexartus testifies that it was thus decided in Sacred Royal Court, in condemning a husband only to exile. Sanfelicius also tells us that certain noble young men,[397] who had killed their wives after an interval because of strong suspicion of adultery, were absolved by the Royal Council of Naples, in view of the quality of the persons concerned. In their favor, authorities of the highest rank had written, whose allegations this same author places under the said decision. And although some of these young men were condemned to the oars, he said that [xxix] this punishment had been imposed because [499] of the mutilation of the privates which followed; because those who do such things are considered enemies to nature. And Calderini, although in the preceding numbers he inclined toward an opinion contrary to ours, came over to our side when he saw that Matthæus held that opinion.

And the reason is very evident; for whenever such an injury is suffered by fine natures, especially among the noble class, it is ever present with them, and continually oppresses the heart, and urges it on to vengeance for the recovery of lost honor, as Giurba well notes. [Citations.]

For this reason, it has always and everywhere been held in case of murder committed for honor's sake that there is no place for the ordinary death penalty, which should be mitigated at the discretion of the judge. And this rule has been followed, when the murder was committed after an interval, and even after a long interval. For the above-said reason, both Grammaticus and Gizzarellus affirm and hand down this opinion. The latter says that it has always been so adjudged by the Sacred Council of Naples, and that this opinion has always been accepted by our ancestors. [Citations.]

It was so judged by the high court of the Vicar, although it was dealing with a murder committed after two years, and by craft, by two brothers upon the adulteress in the presence of her sister's cousin. Cyriacus also speaks of the murder of a husband by his wife, because he was keeping a mistress and was contriving against her honor; and there he said that since just anger has a long continuance, because of its extreme bitterness, vengeance should always be said to follow immediately. [Citation.]

Another reason also is at hand, which is considered by the authorities, namely, that an injury, whereby the honor is hurt, is not personal, but real, and therefore can be resented at any time whatsoever, even [xxx] after the lapse of a very long time, as Giurba holds in our circumstances. [Citations.]

We have therefore a great many standard authorities who affirm, for most vital reasons, that murder committed, even after an interval, upon the person of the wife or of any one else, for honor's sake, ought not to be punished with the ordinary death penalty, but more mildly. Furthermore, these authorities bear witness that the matter has been so judged in the tribunals with which they are acquainted. No attention therefore should be paid to the opposite opinion held by Farinaccius [Citation]; for we plainly see that he speaks contrary to the common and usually accepted opinion in tribunals. [Citation.]

Still further it should be noted that the same author in *cons. 66 num. 5*, holds the very opposite, basing his opinion especially upon a text in the law of Emperor Hadrian [Citation], where a father had killed his son, who was not found in the act with his stepmother, but while out hunting and in the woods, that is, after an interval. And he was punished not with the death penalty, but by deportation. Several of the above-cited authorities offer the decision of this text likewise in corroboration of this opinion of ours. Our point is also proved by the fact that this same author in *quaest. 121* is rather doubtful; and there he acknowledges that for this opinion of ours the reason given above is very strong, namely, that " injured honor " and " just anger " always oppress the heart. And so he says in such a case one should note the sense of the text in the law *Non puto* [Citation], where Modestinus, Doctor of Law, says that he thinks that one would not make a mistake who in doubtful cases should readily give this response against the Fisc; and Farinaccius cites him so speaking.

But one should be on his guard against what this same Farinaccius asserts: namely, that this opinion of his, so far as he could see, was the one more approved by the Sacred Court. For since this point of doubt, as he himself confesses, had not then been advanced, he could not judge what would be the outcome if it had been proposed. And indeed the wisest of the said high authorities do not give their assent [xxxi] to his opinion, but rather hold the contrary, which is favorable to ourselves, as is seen in the decisions they have given from time to time. For it was so held on March 25, 1672, in the case of Carolo Falerno, who was condemned to an unusual penalty for the murder of Francesco Domenici; for he had found him coming out of a church, to which he had warned him not to go, as he was suspicious that the one slain was following his wife. In like manner with Carolo Matarazzi, August 15, 1673, who killed his wife on the foolish grounds that he suspected

her of illegitimate conception because of the absence of her menses; but this suspicion did not indeed correspond with the truth. And in law a matter may be even more mistaken and less observed by human intellect. [Citations.]

Likewise in a murder committed treacherously with an arquebus upon the person of Tomaso Bovini by Francesco Mattucio of Monte San Giovanni, a person of the very lowest class, merely because of the attempted dishonor of his sister. The attempt of the one killed was proved by two witnesses on hearsay of the one slain. On September 4, 1692, the penalty of life sentence to the galleys, to which the said Mattucio had been convicted on strongest proofs on the preceding July 12, was moderated by the sacred court, before the Right Reverend Father Ratta, of blessed memory. With good right, therefore, this same Farinaccius is expressly confuted and overthrown by Matthæus. [Citations.]

This opinion of ours is to be accepted the more readily when we consider that the husband is more stirred by the adultery of his wife than by the murder of his son. [Citations.] Yes, and even more than by the defilement of his daughter. [Citation.] So that if a husband [484] does not complain of the adultery of his wife, he is considered a pimp, as Paschal holds, where we read [xxxii] recently: "Adultery of the wife gives offense not merely to the husband, but blackens and stains the entire kin." [Citations.] That [495] this happened in the present case is plainly evident; for Abate Paolo, brother of Guido, was compelled not only to leave the city,[304] in which he had lived for many years with highest praise, but even to pass out of Italy, because he was pursued undoubtedly by the greatest disgrace on account of this adultery. While [485] he was carrying on Guido's cause in the courts, he moved the laughter and sneers of almost all sensible and wise men, not to say of the very judges themselves, as usually happens in these circumstances. [Citations.]

Nor would it stand in the way of what we have said above if, without prejudice to the truth, we should admit (as the Fisc claims) that Count Guido killed his wife with the complicity [409] and aid of the said Blasio, Domenico, Francesco, and Alessandro, assembled for that purpose; for he could do that in order [505] to take vengeance upon her more easily and more safely. [Citations.]

[xxxiii] [Nor would it stand in our way if we admitted] that he had assembled the said men by means of money.[316] [Citations.]

Nor does this plea of injured honor cease with regard to the murders of the said father-in-law and mother-in-law;[401] for since their conspiracy in the adultery of their daughter is established, they themselves were among the causes of the injury and ignominy which resulted therefrom to the prejudice of the honor and reputation of Count Guido, their

son-in-law and her husband respectively. Therefore, these murders likewise ought to be punished with the same penalty as the principal, according to texts in the law *Qui domum.* [Citations.] And so they gave cause enough to Count Guido to take vengeance on them.

It is to be added, furthermore (as will be proved indeed, and as Count Guido himself has asserted in his testimony), that they themselves did another injury to his reputation by means of the civil suit which they brought on the grounds of the pretended birth of Francesca Pompilia; and not merely here in the City, but also in his own country, they distributed the most bitter libels,[109] which were added to this same lawsuit. Hence it can not be denied that Count Guido for this reason had conceived a just anger and provocation and that he had just cause for taking vengeance. This is according to the text [Citation], where Alexander the Third wrote to the Bishop of Tornacensis that a certain woman, who had killed her child, should be placed in a monastery, because she was reproached by her husband with the accusation that it had been conceived in adultery. For in crimes where anger does not entirely excuse, still the delinquent who kills in anger conceived from just grievance is somewhat excused. [Citation.]

And this is true in spite of the fact that the Fisc may claim that the penalty given in the Constitution of Alexander has been incurred. For in the **[xxxiv]** present case the crime can not be said to have been committed on account of hatred aroused by the lawsuit;[421] for in that suit Count Guido had gained a favorable sentence [263] from A. C. Tommati,[262] which was sanctioned by the Supreme Tribunal of Justice. But the crime was committed indeed because of his just indignation. And this arose, first, from the ignominy growing out of the said pretense as to her birth; second, from the provocation given by the Comparini (now slain) in issuing and distributing the said papers;[109] and, third, from their conspiracy in the flight of his wife. For indeed this Constitution of Alexander does not apply where no guile is present and where some provocation has been given by the one hurt. Farinaccius very fully affirms this throughout *cons. 67,* where in the end he places the complete decision of the Sacred Court.

In any case, since with Count Guido two causes for committing crime concurred: one the aforesaid matter of the lawsuit, another wounded honor because of the lawsuit brought and the flight in which they conspired, wherefrom the adultery had followed, the cause of honor should be given attention, as it is the graver and consequently the more proportionate to the crime. [Citations.]

Likewise the penalty should not be increased in view of the place of the crime, because the defense of one's honor is so justifiable, and the anger and commotion of mind arising therefrom is so just, that reason for it can not be demanded, as Merlin Pignatelli [Citation] holds,

because of Giovanni Francisco de Carrillo [Citation] who speaks of an insult offered in prison. And No. 29 approves the decision because [503] that greater reverence is due to churches and other places consecrated to God, and in which the King of Kings and Lord of Lords dwells in essence; and yet one who commits crime in them from just anger and grievance is excused; for he asserts that all Canonists and other authorities there alleged by him unanimously acknowledge this.

More readily, therefore, should this conclusion follow in our case, since the said Francesca was not staying in a formal prison, but was merely keeping her home as a prison, under security of 300 scudi, that she would not depart therefrom; because one who has given bond and has sworn not to leave a place is neither in chains nor in custody. [Citations.]

[xxxv] Lucan holds that there are differences between being kept in chains and being committed under bond, etc. And Farinaccius holds that the word " custody " should be more strictly interpreted than the word " chains." [Citations.]

Even if, therefore, Count Guido had confessed that he killed his own wife, his father-in-law, and his mother-in-law, with the complicity and aid of the above-named helpers, he should not be punished with the ordinary penalty, for reasons given above. And much more readily should we follow this opinion since we can see that he confessed [498] only that he gave commands for mutilating his said wife (*ad sfrisiandum*), if I may use the word of the authorities. In this case he is not to be held responsible for the subsequent death of his wife and of the others. Decian, *cons. 622, no. 4,* in this very condition, holds that one giving orders can be punished only for the manner of committing the crime, for which bodily punishment can not be inflicted.

Thus far the Fisc has been unwilling to rest satisfied with such a qualified confession. Yet since he claims the right to torture the accused for proving some further pretended truth, the torture shall be simple; nor can the torment of the vigil [526] be inflicted; because the Constitution given out by Pope Paul Fifth, of sacred memory, for the reformation of the courts of the City, stands in the way of that. This is included among his Constitutions as the 71st. By this it was decreed that such torment could not be inflicted unless these two features jointly concur: namely, that the crime be very atrocious and that the accused be burdened with the strongest proofs. [Citations.]

[xxxvi] But a crime is said to be " very atrocious " provided it is one for which a penalty more severe than mere death should be inflicted, such as useless mutilation, burning, and the like. *Farinaccius* [386] *qu. 18, num. 68,* etc. And such a death, as ignominious and infamous, has no place with the persons of nobles. [Citations.]

Hence it is much less so here, because we are not arguing about the death penalty even, which does not enter into the present case for reasons given above. And Gabriellus speaks to this effect on the point that such a crime may not be said to be qualified.

What has been said in favor of Guido, the principal, also stands in favor of the aforesaid Blasio, Domenico, Francesco, and Alessandro; because they can not be punished with the ordinary penalty, but only with the same penalty as the principal. [Citation.] Baldo cites a case under the statute which shows that one under bann for a certain crime can not be killed save by the enemy who had him put under bann; and he says that if the enemy has him assassinated, the assassin is not punished. And he gives this reason, that what is permissible in the person of the one giving the order should be held as permissible in the one to whom orders are given; and he says it had been so held in a case under that law. Castro [Citation] holds that when one is permitted under the statute to take vengeance upon a person who has given him offense, he is also permitted to assemble his friends, to afford him aid, and that they shall go unpunished, just as the principal does. He also asserts that Jacobus Butrigarus[398] [Citation] held thus, in *cons. 277,* where he speaks of the case of a husband who had assembled men to beat one who had wished to shame the modesty of his wife; he ordered his wife to pretend to give ear, and when the intriguer had come [xxxvii] murder was committed. And he says that men brought together in this way should be spared, because such an assembly was permissible for the husband, who was principal. [Citation.] Jason holds that in any vengeance permitted by law, one can not demand it of another; yet he to whom it is permitted may take fellows and accomplices with him for the same act, and if they kill in company with him they shall not be held to account for the murder nor for the aid they have given; and he says that this opinion[509] should be much kept in mind. Cæpollinus also illustrates this in several cases, especially in that of certain men who had killed one keeping the company of the sister of the man who had assembled them; and he says that they should not be punished, just as the principal was not, and he gained his point so that it was thus adjudged. [Citations.]

Soccini also holds it should be thus adjudged, unless one wishes to say that they should be punished with a slighter penalty than the principal, as often happens in the case of auxiliaries. And he speaks in our very circumstances of men assembled by a husband for the sake of killing one who had polluted his wife. In these same circumstances, see also Parisius. [Citation.] Carera [Citation] speaks of a father who had his daughter (who had been keeping bad company) killed by an assassin; and he says that neither the father nor the murderer are to be held to account. [Citation.]

Marsilius also, after placing in the very beginning this principle, that when one matter is conceded all seem to be conceded which lead thereto, draws inference therefrom for the present case and many reasons for it are adduced. Cassanis also [Citation] holds that men assembled in this way are not held responsible either for the murder or for the aid furnished, if they do the killing in the company of the principal. And in these same circumstances Garzoni speaks, decision 71, throughout.

Nor does it stand in the way of our reasoning that one of the aforesaid defendants had inflicted wounds with his own hands, or had killed one of the victims; as Francesco has confessed that he inflicted four or five wounds **[xxxviii]** in the back of Francesca Pompilia. Even in these circumstances the rule holds good that auxiliaries shall not be punished with greater penalty than the principal. And so affirm individually the following authorities among those recently cited. [Citations.]

And Garzoni testifies that it was so adjudged in the said decision 71, where we read: "Or he may have with himself associates for this act," and if they kill the adulterers in company of the principal they are held to very slight account, either for the murder or for the aid given, and it was so adjudged.

And even in the more extreme case of one killing by assassination, and consequently in the absence of the principal, this is the opinion of Baldo [Citation], where we read: "And now it is inquired whether an assassin is ever punished, and I say he is not; because what is permitted in the person giving command is also permitted in the person commanded." Castro [Citation] also says: "Because what I can do of myself I can have done through my helpers who are necessary for that purpose." And Afflicti [Citation] says: "Either with one's own hands, or by help of another, even with the influence of money, and thus by an assassin; for Baldo says on this same point: 'What is permitted in the person giving command is also permitted in the person commanded'; and he witnesses that it was so adjudged." [Citations.] Marta [speaks as follows]: "Much more so because authorities affirm that a husband, who on account of fear can not kill the adulteress, may even by the help of money demand of another that he kill her, and neither of them is then to be punished."

But whatever Caballus [Citation] may say to the contrary, he bases his opinion upon Castro and Rollandus. Castro, however, favors our opinion, as is to be seen in No. 3. Rollandus should not be given heed; for when he offers this very same opinion about the statute which permits anyone to take vengeance, and says that since this kind **[xxxix]** of permission is personal it can not be passed on from one to another, this opinion of his is expressly contrary to the teaching of Baldo, Castrensis, Jason, and others, whom we have alleged above in paragraph

quae dicta sunt. And since this opinion of ours is milder and more equitable, it should hold good, as Jason decides on this point. [Citation.]

Nor can the punishment be increased because of the alleged carrying of prohibited arms;[413] because the latter offense is included then with the real crime. [Citations.] In Guazzin we read that this is so, even if for the carrying of the arms a greater penalty would be inflicted [than for the principal offense]. And so, whenever it is evident that the crime has been committed for honor's sake and for a just grievance, as in the present case, the carrying of the arms may go unpunished, or at least it should not be punished with a more severe penalty than should be imposed for the principal crime itself. Thus Policardus [Citation] well affirms when speaking of arms which are considered treacherous by the Banns.

These claims should hold good more readily as regards Domenico and Francesco, who are foreigners, and are therefore not included in any of the Apostolic Constitutions or Banns, which prohibit the bearing of arms under very heavy penalties. [Citations.]

Especially since they are minors as is made clear in the course of the trial, pp. 35 and 304; in which case they are likewise not bound by these Constitutions and Banns, which give judgment upon the crime of a minor. For the power to make and establish such regulations was lacking in the Prince or public official concerned. [Citations.]

Such are the matters which, in view of the excessive scantiness of time, I have been able to collect in discharge of my duty for the defense of these poor prisoners. Nor do I at all distrust that my Lords Judges, when they see that too little has been said, will wish to supply and offer what is lacking out of the high rectitude for which they are distinguished. For this would be quite in accord with the decree of Emperors Diocletian and Maximian, as related. [Citation.] **[xl]** And they will follow the advice of Hippolitus Marsilius, famous in criminal proceedings, who says that a judge is obliged by his office to seek out grounds of defense for the accused. [Citations.]

DESIDERIO SPRETI,
Advocate for the Poor.

[File-title of Pamphlet 2.]

By the Most Illustrious and Most Reverend Lord Governor in Criminal Cases:

Roman Murder-case.

On behalf of Count Guido Franceschini and his Associates, Prisoners, against the Court and the Fisc.

Memorial of law by the Honorable Advocate of the Poor.

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

[Pamphlet 3.]

Most Illustrious and Most Reverend Lord:

The plea of injured honor which redeems Count Guido from the rigorous penalty that should follow for the commission of murders likewise urges mitigation of the ordinary penalty for Blasius and the associates who had hand in the murder, even though it may be pretended that they were paid thereto.[316] For it is taken for granted that we are dealing with a case far removed from assassination, because of the presence of a person who had real cause for vengeance, as the following authorities think in common. [Citation.]

There has been the strongest controversy among authorities as to whether a father or husband may demand of any one except his son the murder of his daughter or of his adulterous wife. And divided on the two sides of the question, they have contended strongly. [Citation.] Yet the majority are in favor of the affirmative and of the milder sentence; and often, in the event of such a murder, it has evidently been so adjudged. [Citations.]

But since this question lies outside of our line of argument, it would be vain and quite useless labor to take it up, nor is time to be wasted when we are so hard pressed for it. For we are evidently dealing with auxiliaries, assembled for committing homicide, according to the thought of the Fisc. Hence the conditions of a mere " mandatory " are not applicable; because of the immediate presence of the principal in the crime; for when he also lays hand to the crime, those who do likewise are not called mandatories,[510] but auxiliaries and helpers. [Citations.]

Furthermore, just as Guido himself is freed from the death penalty because of the said plea of injured honor, so likewise are his allies and auxiliaries freed, as the following authorities [xlii] unanimously assert. [Citations.]

Those who are cited in support of the opposite view do not pronounce opinion in our peculiar circumstances, but speak of a husband demanding of another the murder of his adulterous wife, and not of auxiliaries who do the killing in company with the husband, as in our case. [Citations.]

In such contingency, auxiliaries who give aid to a husband while killing his adulterous wife have always enjoyed the same indulgence as the principal himself; that is, they always escape the capital penalty, and indeed go entirely unpunished. [Citations.]

Nor does the distinction of Caballus make any difference, where he holds that auxiliaries may indeed assist with impunity a husband or a father killing a wife or daughter respectively, in order that these may kill the more safely; but that they can not lend a hand and actually

kill; [xliii] for in the latter case they are to be held accountable for the murder. Because, for foundation in making such a distinction, he plants his feet upon Paolo de Castro. [Citation.] But this is so far from proving his purpose that it rather turns back on him remarkably to his own injury. For after the latter sets before himself this kind of a difficulty, under No. 2, he adds: "But I hold entirely the contrary: that neither the one who did the killing nor he who made the assembly (as it may be called) are to be held for the murder for the purpose of inflicting the capital penalty."

This is also true in the council of Rollandus a Valle. [Citations.] May that learned authority pardon me;[497] for even if he may attempt to confute Paolo de Castro in the said 154th council, which is in our favor, under the pretext that he speaks contrary to the common opinion, this claim does not suffice in view of the above-cited authorities. And if there were time, I would demonstrate this more clearly.

Furthermore Rollandus alleges Parisius, *cons. 154. lib. 4.* But he could well omit that, because No. 22 proves expressly contrary to him on its very face, where it says: "Under our very conditions was given that excellent decision of Paolo de Castro in the before-cited council. In stronger circumstances (which also include the present case) he concludes that those who knew of, or were present, or were associated with a husband in the act of the said murder, and who furnished him aid, ought not to be punished with a greater penalty than the principal, according to the rule concerning auxiliaries, beside the accurate authority of Marsilius." And he concludes that at the very worst, when the utmost rigor of it is considered, they should not be punished with more than a temporary banishment.

Furthermore, Rollandus in the said council is expressly confuted by Facchinus. [Citation.] Nor is this without vital reason. For just as a qualification that modifies a crime in the principal delinquent increases it also for the auxiliaries, whenever they are aware of it, so all sense of equity demands that a qualification that diminishes the penalty for the principal, even though it be unknown to the auxiliaries, shall act in favor of them also. [Citations.] Hence Caballus remains without a stable foundation, and is opposed to the opinion of the many doctors here alleged, who make no distinction between those who simply assist and those taking a hand in the murder; and indeed all of them [xliv] speak of auxiliaries. Furthermore, it is found that this has often been the judgment, even in the more extreme circumstances of one commanded to a murder, as was said above. And so strong is the plea of [511] injured honor that not only does it extend its protection to mere mandatories, but even to mandatories whose case is modified by the circumstance of assassination. And it causes them to be absolved, as we find that it was so decided. [Citations.]

Hence if both mandatories and assassins are redeemed from the ordinary death penalty, whenever they kill an adulteress at the command of the husband, it necessarily follows that the distinction of Caballus is not a true one, nor is it accepted in practice. For if they are mandatories, we can not deny that they may kill with their own hands; and nevertheless, not to speak of the other decisions cited above, Clar. [Citation] testifies such a decision favorable to the accused was handed down, contrary to the opinion of Caballus.

If, therefore, Blasius and his fellows are not to be punished with the death penalty for affording aid in the murders, vain is the question whether they can be subjected to the torment of the vigil [526] for the purpose of having the very truth from their own mouths. For this procedure demands two requisites: one that the most urgent proofs stand against the accused, and the other that the crime be very atrocious, according to the prescript of the Bull. [Citations.]

And although the powers of this Tribunal are very great for the dispensing with one of the said requisites, yet I have never seen the said torment of the vigil inflicted unless when there was no doubt that the crime, for which the Fisc was trying to draw confession from the accused, deserved the capital penalty. We can not believe that the prosecution expects to make a case to this end because of the pretended conventicle;[409] since those who are assembled are not to be held under the penalty for conventicle, but only the one who assembled them is so held, as Baldo well asserts. [Citations.] Nor in this case can the penalty for the asserted conventicle be made good [xlv] against Count Guido himself, since the cause for which he assembled the men aids him in evading the penalty; inasmuch as one may assemble his friends and associates for the purpose of regaining his reputation. [Citations.]

For this has been well proved, that whenever any one for just grievance assembles men to avenge his injury, he has not incurred the crime and penalty of conventicle.

And although Farinacci, *quaest. 113, n. 55,* declares that this holds good provided the vengeance be immediate, but that it is otherwise if the vengeance be after an interval, yet I pray that it be noted that in either case, if it concerns vengeance for a personal injury (in which conditions he himself speaks), and therefore when for an injury which wounds the honor, such vengeance is at all times said to be taken immediately. For such an injury always urges and presses, because it should be termed the restoration and reparation of honor (which the one injured in his reputation could not otherwise accomplish), rather than vindication and vengeance, as we believe was satisfactorily proved in our other plea in behalf of Count Guido.

But all further difficulty ceases with this consideration: prosecution can be brought for conventicle, if the men were assembled for an evil

end and no other crime followed therefrom; but when, according to the sense of the Fisc, they have been called together for committing murders, and these are really committed, no further action can be taken as regards the prohibited conventicle, but rather for the murders themselves; for the assembling of the men tended to this same effect. [Citations.] And it is for this reason more particularly: because when the beginning and the end of an act are alike illegal, the end is given attention, and not the beginning, as Bartolo teaches us. [Citations.]

It is to be added still further, that the assembling of men is not illegal in itself; **[xlvi]** indeed it is possible for it at some times to be both permissible and worthy of approval, as in the cases related by Farinacci. But it is illegal because of its evil consequences and the base end for which it is usually made. Hence, as the assembling of men is prohibited, not in itself, but because of something else, the end ought to be considered rather than what precedes the end.

Nor should the rigorous penalty of death be inflicted at all upon Domenico Gambassini and Francesco Pasquini for the pretended carrying of arms [413] of illegitimate measure; because they are foreigners and had not stayed long enough in the Ecclesiastical State so that their knowledge of this law could be taken for granted. Nor ought it to be inflicted upon the others; for even if the death penalty is threatened by the Constitutions and Banns for the bearing or retention of them; yet since the carrying of this kind of arms is not prohibited for reasons in itself, but because of the pernicious end which follows it, or can follow it; and because this bearing of arms was looking toward the said murders; and because these, although they are not entirely permissible, are not utterly without excuse, the crime of carrying such arms should be included with the end for which they were carried; because the one is implied in the other, nor may the means seem worse than the end. And although, according to the opinion of some persons, the penalty for carrying arms is not to be confused with the crime committed with them, whenever the latter is the graver, yet this seems to be so understood when a crime is committed with them which is entirely illegal and without excuse. But this is not so when the crime is decreased and extenuated, and indeed excused in part, because of the reason for which it was committed.

In any case, the bearing of arms, according to common law, is but a slight crime. [Citations.]

Although by special Constitutions and Banns the penalty has been increased almost to the highest possible point, yet this kind of increase does not change the nature of the crime. And just as in the eyes of the common law **[xlvii]** torture is not inflicted for getting the truth from those indicted for the said carrying of arms, in view of the insignificance

of the crime, in like manner it can not be inflicted by the force of Constitutions and Statutes which have increased the penalty. [Citations.]

And this is especially true in the case of the torment of the vigil, which can not be inflicted for a crime that is not in its very nature most atrocious, but that is held as such, so far as the penalty is concerned, merely by the strength of a decree. This holds good unless indeed the nature of that crime is changed according to the method of proceeding in it. [Citation.]

And we see in the Banns of our Illustrious Lord Governor that he expressly declared this, when he wished to proceed with the torment of the vigil in cases, in which he could not proceed legally; that of a certainty he would not do so. Nor would he indeed have done this, if he could have inflicted such tortures in the case of crimes which are not capital by common law, but are to be expiated with the death penalty by the rigor of the Banns.

H. Arcangeli,
Procurator of the Poor.

[xlviii] [File-title of Pamphlet 3.]

By the Most Illustrious and Most Reverend Lord Governor in Criminal Cases:

Roman Murder-case.

In behalf of Blasio Agostinelli and his Associates, Prisoners, against the Fisc.

Memorial of fact and law.

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

SUMMARY.

[Pamphlet 4.]

JUNE 24, 1694.

No. 1.[110]

The sworn testimony of a witness as to the poverty of said Count Guido Franceschini and the miseries suffered by the Signori Comparini while they stayed in his home in the city of Arezzo.

Angelica, the daughter of the deceased Pietro and Giovanna Battista of Castelluccio, in the Diocese of Arezzo, about 35 years of age, was examined by me on behalf of Pietro Comparini, against any one whomsoever, and put on permanent record; as to which testimony, she took oath to speak the truth, as is seen below.

I tell you in all truth, sir, that while I was staying in Arezzo last January [98] in the home of Signora Maddalena Baldi [53] Albergotti, the chance was offered me to go and serve Signora Beatrice Franceschini and her sons, etc. I decided to do so, and when I had gone to the home of the Signori Franceschini I spoke with the said Signora Beatrice. She drew me aside into a little room and told me that she would take me as a servant, but that I should never have any private dealings with the two old people who were in the house; one of them was Signor Pietro Comparini, and the other Signora Violante, his wife. She charged me still further that if either of the two old people chanced to call me into their chamber, I should not go without first asking her permission. On these terms I accepted the service. After I had entered thereupon, I noticed that Signora Violante stayed in her room most of the time, weeping, and though the Comparini were stiff with cold, the room was without fire. Hence I took pity on her, and without the knowledge of Signora Beatrice, I took the coals from my own brazier and carried them to her. But no sooner did I offer them to her than Signora Violante ordered me out of the room, lest Signora Beatrice might take offense that I had done this act of charity. Also, once among the many times, when Signora Beatrice found it out she made me leave the coals in the fireplace and snatched the shovel from my hands, and threatened me, saying that if she had wished it she herself would have come to bring it; because she did not want me to do any service whatsoever for the said Signori Comparini. And the Comparini could not even speak among themselves, because Signor Guido Franceschini, the Canon Girolamo his brother, and Signora Beatrice, their mother, would stand at one door or another of the apartment and listen to what the said Signori Comparini were saying to one another. This occurred every evening and morning until the said Signor Pietro left the room and the house. And when he returned at

night they were unwilling for me to make a light for him on the stairway. And once when Signor Pietro came back home about half past six in the evening, and I heard him scrape his feet, I took up the lamp to go and meet him. But Signor Guido noticing that, snatched the lamp from my hands, [1] telling me that I had better keep still and that I had better not approach unless I wished to be pitched out of the window. And this seemed all the worse to me, because when I first entered upon the service of the said Franceschini I had heard it said around the house that one evening, as Signor Pietro was coming back home, he had fallen, while ascending the same steps without a light, and that he had made a very ugly bruise, because of which he had had to keep his bed for many days. At the same time, while I was in the said service, it chanced one morning at breakfast that the Franceschini gave some offense to Signora Violante, because of which a mishap befell her. For no sooner had she reached her own room than she threw herself into a straw-chair and swooned away. When Signora Francesca Pompilia, wife of the said Signor Guido, found it out, she began to weep and to cry out with a loud voice, saying, " My mother is dying." Whereupon I ran to Signora Violante and began to unlace her, and turned to bring her a little vinegar and fire. But because there was no fire I took some wood and put it in the fireplace to kindle it. When Signora Beatrice saw this she snatched the wood from the fire, in great anger, and told me to take the ashes, which were quite enough to warm her feet. So I took the ashes that were in the fireplace, but because of the intensely cold weather they were cool when I reached the room where the Signora Violante was half dead. Accordingly, the Signora Pompilia and I, both of us weeping, unclothed Signora Violante and put her in the bed, which was as cold as ice. And because I was crying when I returned to the kitchen, after having put Signora Violante to bed, Signora Beatrice said to me: " Do you want me to take a little hemp and wipe your eyes? " Signora Francesca Pompilia also heard this, and she made some complaint to Signora Beatrice, who did not want me to return to the room again nor to make a little gruel, as Signora Violante had ordered.

It happened a few days later, during the month of February following,[98] that while the Signori Franceschini, Francesca Pompilia, Signor Pietro, and Signora Violante were at the table, they began talking of their purpose of sending me away, as the Franceschini had already dismissed me from service. When Signora Francesca Pompilia, who was at the table with the others as I have said above, heard this, she remarked to Signor Pietro and Signora Violante: " Do you know why they wish to send her away? They believe she wished to censure me because Signora Beatrice said some days ago that she would take hemp and wipe the tears from her eyes, when she was weeping over the

accident that happened to you, mother." Then Signor Pietro spoke up and asked the Signori Franceschini to keep me in their good graces for eight or ten days more, for if he wished to return to Rome with Signora Violante [li] he would take me with them. And he said he could expect this favor at their hands, as it was the first he had ever asked of them. To this, none of the Franceschini replied; but Signor Guido rose from the table and, approaching me, gave me two very good licks. The others then came up. While he was doing this, the Canon, his brother, also gave me some kicks, and his mother struck me and told me to leave at once. As soon as Signora Violante saw and heard this she took pity on me and exclaimed to the said Signori: "Where do you wish the poor thing to go now?" And all the Franceschini with one accord said to Signora Violante: "You get out with her, too." And they called her "slut," and other insulting names, so that Signora Violante went to her room to put on her wraps. The Canon [51] drew a sword and ran after her into the room and shut the door. I, fearing that he would inflict some wounds upon Signora Violante, ran to enter the room and found that the Canon had locked himself within. So myself and Signor Pietro and Francesca Pompilia began to weep and to cry out for help, thinking that the Canon would kill Signora Violante there inside. And after some little time, I left the house, while the said couple and Signora Francesca Pompilia were still making outcry to the Signori Franceschini.

During all the time I remained in the service of the said Signori Franceschini at Arezzo, as I have said above, I can say of a truth that every morning and evening at the table I served the said Signori Franceschini, Signora Francesca Pompilia, Signor Pietro and Signora Violante Comparini. For the food of all this tableful, the Franceschini bought on Saturday a sucking lamb, on which they spent, at most, twelve or fourteen *gratie*. Then Signora Beatrice cooked it and divided it out for the entire week. And the head of the lamb [117] she divided up for a relish three times, and for the relish at other times she served separately the lights and intestines. During the days of the week when they ate flesh there was no other sort of meat on the table to satisfy the needs of all the tableful. When he did not buy the lamb on Saturday,[118] as I have said, Signor Guido gave money to Joseph, the house-boy, to buy two pounds of beef. Signora Beatrice herself put this to cook every morning, nor was she willing for the rest to meddle with it, and they ate therefrom at the table and carved for the evening meal. And because this meat was so tough that Signor Pietro could not eat it (as they had not cooked it enough), Signor Pietro did without eating meat, for the most part, and ate only a little bread, toasted and in bad condition, and a morsel of cheese. [lii] Thus Signor Pietro passed the days when they bought beef. On fasting days he ate vegetable soup

with a little salted pike, and sometimes a few boiled chestnuts. But always, whether on fasting days or not, the bread was as black as ink,[110] and heavy, and ill-seasoned. Then the wine which served for the table was but a single flask; and, as soon as the wine was poured into this, Signora Beatrice made me put in as much more of water. And so I made out to fill the wine flask, half of it being water, and very often there was more water than wine.[117] This flask she put on the table, and ordinarily it sufficed for all those eating, although at most, the flask did not hold more than 3½ *foghliette* [half-pints] according to Roman measure.

Furthermore, I say that, not many days after I had left this service, it was public talk throughout Arezzo that Signor Pietro had gone home about half past six in the evening and had found the street door shut so that he could not open it, and he was obliged to knock. When Signora Violante saw that no one about the house was going to open the door she herself went downstairs to do so, but the door was locked with a key. And although she called Signor Guido and others who were in the house, yet no one stirred to go and open it. Therefore Signor Pietro went to sleep at the inn, and in the morning returned to see Signora Violante and Signora Francesca Pompilia. It was likewise said throughout Arezzo that when Signor Pietro complained at having been locked out of the house by the Canon, and when both Signor Pietro and Signora Violante reproached them bitterly about it, a new quarrel arose among them, and because of it both the Signori Comparini were driven out of the house. Signora Violante was received at the home of Signor Doctor Borri, where she dined that evening and spent the night. And Signor Pietro went to the inn to dine and sleep.

When I heard that, I went to the house of Signor Borri to see Signora Violante, but was not admitted. And the wife of Signor Borri told me to go and tend to my own affairs. For she did not wish the Franceschini, who lived opposite, to perceive that I had gone there to see Signora Violante, as some disturbance might arise therefrom. Then the next morning I went to the inn, where I had been told Signora Violante had gone to find Signor Pietro, but I did not find either of them, and was told by the host that they had gone out. So, not knowing where to find them, I returned to the home of Signora Maddelena Albergotti, where I was staying. And I heard afterwards that both Signor Pietro [liii] and Signora Violante had returned to the Inn, where they had breakfasted. Then by the interposition of the Governor of Arezzo they were reconciled with the Franceschini, and they returned indeed to the house of the latter. I heard also that the Franceschini continued to maltreat and insult the said couple, as they had continually done while I was in their service. Therefore they were finally obliged to leave Arezzo and go back to Rome.[100]

All the abovesaid matters I know from having seen and heard the ill-treatment, which the Franceschini inflicted upon the Comparini, and the insults which they offered them and Signora Francesca Pompilia; and likewise from having heard them talked about publicly throughout Arezzo, where it is known to everyone and is notorious, and where there is public talk and rumor about it.

JUNE 17, 1697.

No. 2.

Various attestations [111] as to Francesca's recourse to the Bishop and Governor because of the cruelty of her husband and relatives.

To whomsover it may concern:

We, the undersigned, attest as true: That Signora Francesca Pompilia Comparini, wife of Signor Guido Franceschini, has many and many a time fled from home and hastened now to Monsignor the Bishop,[139] and again to the Governor,[135] and also to the neighbors, because of the continual scolding and ill-treatment which she has suffered at the hands of Count Guido her husband, Signora Beatrice her mother-in-law, and the Signor Canon Girolamo her brother-in-law. We know this from having met her when she was fleeing as above, and from the public talk and the notoriety of it throughout the city of Arezzo. In pledge of which, have we signed the present attestation with our own hands this abovesaid day and year, etc.

I, CANON ALESSANDRO TORTELLI, affirm the truth to be as abovesaid, and in pledge thereto have signed with my own hand.

I, MARCO ROMANO, affirm the truth to be as abovesaid, and in pledge, etc., with my own hand.

I, ANTONIO FRANCESCO ARCANGELI, affirm the truth to be as is contained above, with my own hand.

I, CAMMILLO LOMBARDI, affirm as is contained above, with my own hand.

I, FRANCESCO JACOPO CONTI [85] of Bissignano affirm as is contained above, and in pledge, etc., with my own hand.

I, URBANO ANTONIO ROMANO,[144] a priest of Arezzo, and at present Curate of the parish church of St. Adriano, affirm the truth to be as is contained above, and in pledge thereto have subscribed with my own hand.

Then follows the identification of the handwriting in due form, etc.

[liv] Most Illustrious Sir, my most Honored Master:

Extract from a letter written by D. Tommaso Romani, uncle of Guido Franceschini, to Pietro Comparini in Rome.

I can not do less, etc., departure, she has been little like the Signora Francesca, etc.; she fled from home, and went into San Antonio. And thither ran also Signor Guido, the Canon, and Beatrice, etc., in order that she might come back, and in that belief the Signora Francesca returned home, etc. Yesterday, Signora Francesca and my sister were in the Duomo at sermon. At its close, while she was going away and was near the gate of Monsignore,[139] Francesca fled into the Palace, which is very near by. This was about seven o'clock in the evening, and there was a fine row in the Palace, etc.

Most Illustrious Signor and most Cherished Master:

Extract from another letter written by Bartolomeo Albergotti, a gentleman, to Pietro Comparini.

At my return, etc., the Signora, his wife, has been melancholy, and two evenings after your departure, she made a big disturbance, because she did not wish to go and sleep [115] with Signor Guido her husband, etc. The day before Palm Sunday the Signora went, etc., to preaching, etc., and in leaving there she rushed into the Palace of the Bishop,[139] etc. She took her station at the head of the stairs [141] and stayed there until half past six in the evening; and neither Signora Beatrice nor Signor Guido were able to make her return home. Yet the Bishop did not give her an audience, but his secretary hastened thither and urged Signor Guido and Signora Beatrice not to scold the Signora his wife, etc. And after quite enough of such disputes, they took her back home, etc.

MARCH 21, 1697 [for May.]

No. 3.

Deposition of Francesca as to letters [114] asserted to have been written by her to Abate Franceschini, and previously outlined by her husband; recorded in the prosecution brought for her pretended flight.

Francesca Comparini, when under oath, etc., when questioned whether she had ever sent any letter to Abate Franceschini here in the City, while she lived in Arezzo, replied:

While I was in Arezzo I wrote, at the instance of my husband, to my brother-in-law Abate Franceschini, here in Rome; but as I did not know how to write, my husband wrote the letter with a pencil [114] and then he made me trace it with a pen and ink it with my own hand. And he told me that his brother had taken pleasure in receiving such a letter of mine, written by myself. This happened two or three times.

When questioned whether if she should see one of the letters written as is told above, and sent to the City to the same Abate Franceschini, she would recognize it, etc.

She replied: If your Honor would cause me to see one of the letters written by me, as above, and sent to Abate Franceschini, I should recognize it very well.

And when at my command the letter was shown to her, about which there was discussion in the prosecution, and which begins *Carissimo Cognato sono con questa,* and ends, etc., *Arezzo 14 Giugno 1694, affetionatissima Serva, e Cognata Francesca Comparini ne Franceschini.*

[lv] She responded: I have seen and have examined carefully this letter shown me by the order of your Honor, which begins *Carissimo Signor Cognato sono con questa,* etc., and ends *Francesca Comparini, ne Franceschini,* and having looked at it, I think, but can not swear to it as the truth, that this is one of the letters written by me to my brother-in-law, Abate Franceschini, in conformity [to my husband's wishes] as is said above.

No. 4.[113]
The tenor of the letter written as above to Abate Franceschini.

Dearest Brother-in-law:

I wish by this letter to pay my respects to you, and to thank you for your efforts in placing me in this home, where, far removed from my parents, I live now a tranquil life and enjoy perfect safety, not having them around me. For they grieved me night and day with their perverse commands, which were against the law, both human and divine: that I should not love Signor Guido, my husband, and that I should flee by night from his couch.[115] At the same time they made me tell him that I had no congeniality with him and that he was not my husband because I have no children by him. They also caused me to run away often [140] to the Bishop [139] without any reason whatever, and made me tell the Bishop that I wished to be divorced from Signor Guido. And for the purpose of stirring up great discord in the home, my mother told the Bishop, and Signor Guido, and then the entire town, that the Canon my brother-in-law had solicited me dishonorably,[52] a thing that had never been thought of by him. They urged me to continue these evil counsels, which were far from right and far from the submission due to my husband. And they left me at their departure their express command, by my obligation to obey them, that I should kill my husband, give poison to my brothers-in-law and my mother-in-law, burn the house and break the vases and other things, in order that in the eyes of the world it might not appear after their departure that it was they who had counseled me to commit so many crimes. And finally at their departure, they left me, as a parting command, that I should choose for myself a young man to my taste, and with him should run away to Rome, and many other matters, which I

omit for blushing. Now that I have not her at hand who stirred up my mind, I enjoy the quiet of Paradise, and know that my parents were thus directing me to a precipice, because of their own rage. Therefore, now that I see in their true light these deeds proposed by the command of my parents, I pray for pardon from God, from yourself, and from all the world. For I wish to be a good Christian and a good wife to Signor Guido, who has many times chidden me in a loving manner, saying that some day I would thank him for the reproofs he gave me. And these evil counsels which my parents have given, I have now made known, and I acknowledge myself

Your most affectionate servant and sister,
FRANCESCA COMPARINI *ne* FRANCESCHINI.

AREZZO, *June* 14, 1694.

Outside directed to Abate Paolo Franceschini, Rome.

[lvi]

[The deposition of Pompilia is translated pp. 69-73 in its completer form as given in the Summary for the Defense. The only additional fact given in this version is the date of the affidavit, Monday, May 13, 1697.[354] She had been arrested at Castelnuovo May 1.]

No. 6.

Attestations of priests and other persons, worthy to be accepted in all respects; who gave Francesca assistance even till her death; they speak of her honesty, and her declaration that she had never violated her conjugal faith.

[lvii] I, the undersigned, barefooted Augustinian priest,[353] pledge my faith that inasmuch as I was present, helping Signora Francesca Comparini from the first instant of her pitiable case, even to the very end of her life, I say and attest on my priestly oath, in the presence of the God who must judge me, that to my own confusion [358] I have discovered and marveled at an innocent and saintly conscience in that ever-blessed child. During the four days she survived, when exhorted by me to pardon her husband, she replied with tears in her eyes and with a placid and compassionate voice: " May Jesus pardon him,[359] as I have already done with all my heart." But what is more to be wondered at [357] is that, although she suffered great pain, I never heard her speak an offensive or impatient word, nor show the slightest outward vexation

either toward God or those near by.[357] But ever submissive to the Divine Will, she said: " May God have pity on me," in such a way, indeed, as would have been incompatible with a soul that was not at one with God. To such an union one does not attain in a moment, but rather by the habit of years.

I say further that I have always seen her self-restrained, and especially during medical treatment. On these occasions, if her habit of life had not been good, she would not have minded certain details around her with a modesty well-noted and marveled at by me; nor otherwise could a young girl have been in the presence of so many men with such modesty and calm as that in which the blessed child remained while dying. And you may well believe what the Holy Spirit speaks by the mouth of the Evangelist, in the words of St. Matthew, chapter 7: " An evil tree can not bring forth good fruit." Note that he says " can not," and not " does not "; that is, making it impossible to infer the ability to do perfect deeds when oneself is imperfect and tainted with vice. You should therefore say that this girl was all goodness and modesty, since with all ease and all gladness she performed virtuous and modest deeds even at the very end of her life. Moreover she has died with strong love for God, with great composure, with all the sacred sacraments of the Church, and with the admiration [lviii] of all bystanders, who blessed her as a saint. I do not say more lest I be taxed with partiality. I know very well that God alone is the searcher of hearts, but I also know that from the abundance of the heart the mouth speaks; and that my great St. Augustine says: " As the life, so its end."

Therefore, having noted in that ever blessed child saintly words, virtuous deeds, most modest acts, and the death of a soul in great fear of God, for the relief of my conscience I am compelled to say, and can not do otherwise, that necessarily she has ever been a good, modest, and honorable girl, etc.

This tenth of January, 1698.

I, Fra Celestino Angelo of St. Anna, barefooted Augustinian, affirm as I have said above, with my own hand.

Another attestation as above.

We, the undersigned, being interrogated for the truth, have made full and unquestioned statement on our oath, that we were present and assisted at the last illness from which Francesca Pompilia, wife of Guido Franceschini, died. She was often asked by her confessors and other persons whether she had committed any offense against the said Guido, her husband, whereby she

might have given him occasion to maltreat her in such a manner as to cause her death. And she always responded that she had never committed any offense against him,[355] but had always lived with all chastity and modesty. And this we know from having been present during the said suffering, and from having heard all these questions and responses while we were giving her medical treatment, or otherwise assisting, and from hearing her respond to these questions, as above, during the four days [350] while she was suffering from her wounds, as we have seen and heard her; and we have witnessed her dying the death of a saint.

In pledge thereto we have signed this present attestation with our own hands here in Rome this tenth of January, 1698.

I, NICOLO CONSTANTIO, etc., who assisted at the treatment of the said Francesca Pompilia during four days, attest as above, etc.

I, Fra CELESTINO ANGELO [353] of St. Anna,[351] barefooted Augustinian, say that I was present from the first instant of the case, even to the end of her life, and was always ministering to her. She ever said "May God pardon him in heaven as I pardon him on earth;[359] but as for the matter they charge me with, and for which they have slain me, I am utterly innocent." [355] In proof whereof she said that God should not pardon her that sin, because she had never committed it.[356] She died as an innocent martyr in the presence of another priest, to the edification of all the bystanders, as I have affirmed above with my own hand.

[lix] I, PLACIDO SARDI, a priest, affirm with my own hand as the abovesaid Father, Fra Celestino, has declared, having been present as above.

I, the MARQUIS NICOLO GREGORIO, affirm as above with my own hand.

I, the undersigned, affirm what is contained in the above-written statement, as well as in the attestation of the reverend Father Celestino of Jesu and Maria. I assisted the abovesaid Signora Francesca Pompilia from the first, having picked her up from the earth where she lay in utter weakness because of her wounds. She had her head upon the legs of Signor Pietro Comparini,[328] who was already dead. She made confession in my arms to the Principal of the Greek College, because she could neither rise up nor lie down. And from that hour I never left her, but always ministered to her even unto her death. She was the most exemplary and edifying

Christian I have ever seen. For I saw her resigned to the divine will, and she always relied upon her own innocence, etc.

I, GIUSEPPE D'ANDILLO, with my own hand.

I, the undersigned, attest and affirm what is contained in all the said affidavits, from having assisted the said Francesca Pompilia, etc.

DIONYSIO GODYN, with my own hand.

I, LUCA CORSI, affirm with my own hand as is contained in all the said attestations, from having assisted day and night as long as the malady of the former Francesca Pompilia continued, and from having heard as above.

I, GIOVANNI BATTISTA GUITENS, apothecary, who have assisted at the treatment and care of the said Francesca Pompilia, affirm with my own hand as is contained in all the above affidavits and attestations, from having assisted continually throughout a night and a day at the malady of the same.

I, GIOVANNI BATTISTA MUCHA, the boy of the said Giovanni Battista Guitens, apothecary, affirm with my own hand as is contained above in the said attestation, from having assisted with the former Francesca Pompilia.

Full and unquestionable statement is given by me the here undersigned, Abate Liberato Barberito, Doctor of Theology, that, as I was summoned to assist at the death of the said Signora Francesca Comparini, I often noticed, and especially during an entire night, that the above-named defendant suffered the pains of her wounds with Christian resignation, and condoned with superhuman generosity the offenses [359] of the one who had caused her innocent death with so many wounds. [lx] I also observed during that night the tenderness of the conscience of the above-named. For she passed it in showing the unwavering feelings of an heroic and Christian perfection. And this so much so that I can attest [354] that during the experience I have had, having been four years Vicar in the Cure of Monsignor, the Bishop of Monopoli, of blessed memory, I have never observed the dying with like sentiments. And this is all the more so in an evil caused so violently by another. Therefore in pledge, etc. Rome, this tenth day of January, 1698.

I, ABATE DI LIBERATO BARBERITO, affirm as above, etc.

[File-title of Pamphlet 4.]

By the Most Illustrious and Most Reverend Lord Governor in Criminal Cases:

Roman Murder-case with qualifying circumstance.

For the Fisc.

Summary.

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

[lxi]

Romana Excidii.

[Pamphlet 5.]

Most Illustrious and Most Reverend Lord:

The deplorable slaughter of the entire Comparini family, which occurred in this dear city of ours on the second night [319] of the current month of January,[365] and the shedding of their blood, cries out from earth to God for vengeance upon the criminals. And in order that we may fulfill the obligations of the office we are occupying, we have paid down the price of toil to narrate here with faithful pen the series of events. From this, my Lords Judges may readily see what laws may be applicable for a decision as to this cause and for the punishment of the delinquents for the same deed, etc., and so Barbosa says in his axioms in jurisprudence, axiom 93, No. 1: "Just as from the deed the law takes its rise, so from the deed the law dies."

The series of facts, therefore, is as follows:[462] Guido Franceschini, of the city of Arezzo, married [458] [461] Francesca Comparini, for whom, by Pietro and Violante Comparini, there were promised as dowry,[91] among other matters, certain properties subject to a reversionary interest.[69] For they had brought this same Francesca up in their home as their own daughter, and as such they married her. Then, as the aforesaid Pietro and Violante had no other children, they left their home in the City to go and live in the home of Franceschini at Arezzo.[94] There, for some time, they continued to live together in peace; but, as often happens among friends and relatives, contentions and quarrelings arose.[95] On account of these, the aforesaid Pietro and Violante left that home and the city of Arezzo, and went back to Rome.[100] In the meantime, as the flame of this enkindled hatred increased, a lawsuit was instituted [260] as to the dowry once promised, but now denied by Pietro, on the pretext that Francesca was not indeed the daughter of the same Pietro and Violante, but that, after a pretense of her birth had been made,[103] she had been received and brought up by them. And for this reason the said Guido and Francesca could not hope for the inheritance of the properties under the reversionary interest.[69] But although Franceschini gained a favorable judgment on this point,[263] yet when appeal had been made on behalf of Pietro Comparini,[264] Francesca declared that she was ill-treated in the home of her husband by himself, and therefore desired to leave that home. Accordingly, with the aid and companionship of Canon Caponsacchi, a relative of the said Franceschini, as is supposed, she ran away. But Franceschini had notice of his wife's [lxii] flight and, following her up, he overtook her

at the tavern of Castelnuovo. There he went to the governor [226] of that place and saw to effecting the capture [222] of his wife and the Canon, as indeed followed. Then the quarrel was continued. A criminal suit [269] was brought in this Tribunal of the Governor of the City;[270] the process of action was arranged, and the counsel on both sides was often heard, both by word of mouth and in writing. At last it was decided that owing to lack of proof [273] of adultery the said Canon should be banished to Civita Vecchia [271] and Francesca should be held in safekeeping.[276] But because the Comparini claimed that the furnishing of food in the safekeeping was the duty of Franceschini, and the latter declared it lay with Comparini,[282 283] the most Illustrious Lord Governor, having first secured the consent of Abate Paolo,[288] the brother of Guido and his representative in the case, assigned the home [284] of the Comparini to Francesca as a safe and secure prison under security.

While these contests were still pending,[265] both in the civil and criminal cases, as well as in that for divorce brought by Francesca, the wife,[266] this same Franceschini schemed to take vengeance upon the abovesaid. For the execution of this criminal purpose he brought together [312] Domenico Gambassini of Florence, Alessandro Baldeschi of the region of Castello, Francesco Pasquini Antonii of the Marquisate of Monte Acuto, and Blasio Agostinelli of the town of Popolo, and dwelling at the Villa Quarata. He provided them with swords and dagger,[413] prohibited by the Bull of Alexander VIII, and entered the City in company with the aforesaid men. Approaching the home of the Comparini, at the first hour [320] of the night, he secured the opening of the door to himself under the pretense of bringing a letter,[321] sent to Violante by the said Canon Caponsacchi, then staying at Civita Vecchia. As soon as the door of the home was opened by the said Violante,[323] the aforesaid Guido and his companions immediately set upon her. She was cut to pieces with their swords and immediately fell dead. Pietro likewise was cut down and died. Francesca, however, tried to hide under a bed,[325] but was found and wounded in many places. Then, as if God granted her the favor,[348] she was not left utterly dead, though after a few days she also passed away; and thus she could reveal this monstrous crime. As soon as my Lord Governor had notice of this, with most vigilant attention, he saw that the malefactors were pursued beyond the City.[333] Accordingly that same night they were discovered in the tavern at Merluccia [340] with firearms and illegal swords, [lxiii] still bloody,[342] and were taken back to prison. Then, when a case had been made against them, they were examined as to the crime. Some of them indeed confessed it, and although the others made denial of the management and knowledge of the killing of the entire family, yet against them there are most urgent presumptions of the knowledge and management abovesaid. Furthermore, from the

same prosecution the gravest proofs have resulted, such as can be but slightly attacked and controverted by the Defense.

Hence, when this cause may be presented to receive judgment, we believe that no foundation can afford defense for the criminals to escape the capital penalty, so far as they have confessed their crime, or can release those who have denied it from the rigorous torture of the vigil.[526] For what if the Defense do strongly argue the question as to whether a husband who kills an adulterous wife, not immediately and when found in adultery, but after an interval,[405] ought to be excused from the ordinary penalty of the *Lex Cornelia de Sicariis*? Some authorities indeed give an affirmative opinion for the excuse of the husband, as is to be seen in Giurba. [Citations.] Yet all of these authorities for mitigating the penalty upon a husband who kills his wife after an interval are moved by this reason: That since the sense of injured honor always oppresses the heart, it is difficult to restrain just resentment; for this reason the defense of the honor is said to be immediate when done as quickly as possible.

But there are indeed many other authorities who stand by the negative, asserting that a husband who kills his wife, otherwise than when taken in adultery and in acts of passion, should be punished with the ordinary penalty. [Citations.] D. Raynaldus [Citation] says this opinion is the truer and the more advantageous to the state, nor should one depart from it in giving judgment. Sanzio says that it was often adjudged in this Senate that a husband was not excused by adultery legitimately proved, if he killed his wife after an interval; **[lxiv]** and for this reason, because formerly, according to the law of Romulus, a husband could kill his wife, but the Lex Julia permitted him to kill only the vile adulterer, as Matthæus proves. [Citation.]

But in this our present show of fact we believe we are dealing with a matter outside of the difficulty of this proposed question. For the authorities cited above for the contrary opinion hold good, and should be understood to do so, whenever the contention is about a husband who has killed his wife without excess of law and with no concurring circumstances and aggravating qualities, and when moved only by just grievance. But it is otherwise when, as in our case, excess and contempt of law is present and aggravating circumstances and qualities concur.[408] Laurentius Matthæus [Citation] testifies that, according to common practice, such a distinction has been followed out. And after he had affirmed that a husband should be excused from the ordinary penalty and be punished more mildly, he adds: " For these reasons, it is the common practice to weigh the effect of the grievance and to punish only the excess; so that if the suspicion of guile in the manner of killing is present (as he considers any circumstance which tends toward treachery) the penalty is aggravated."

The aggravating circumstances which concur in our case are indeed many, and they are so grave that any one of them is enough reason for imposing the death penalty or for qualifying the crime.

The first of these is the assembling of armed men;[409] for according to decrees of the Governor of this City the penalty of death and of the confiscation of goods is inflicted upon the one assembling the men; and this is true even if those assembled are but four,[410] as is read in chapter 82 of the same Banns. This circumstance and quality can not be evaded on the authority of certain jurists who assert that it is permissible for a husband to kill his wife, even by means of men thus brought together. For the said authorities speak, and should be understood, in a case in which a husband may kill with impunity an adulterer and his own wife in the very act of adultery, or in the home of the husband. But it is otherwise if she is killed after an interval, or outside of the home of her husband; according to what is given. [Citation.] Or these matters might hold good if in no other way he could kill the adulterer and his wife. So think all authorities who can be adduced in favor of the husband. This can not be said in our case since Franceschini,[469] while following his wife with firearms, could have taken [lxv] vengeance at the inn of Castelnuovo. But he had recourse to the judge,[222] and chose the legal way of punishing his wife and the Canon with whom she fled. Or these claims would hold good if he had assembled a smaller number of men, whereby the crime of conventicle would not have been established. And this is the more strongly to be held because we are not concerned with a deed that is unpunishable, and permissible by law, as I have said.

Nor do we believe that the Defense can make a claim that the husband may kill an adulterous wife after an interval with impunity; for all the authorities who can be adduced in favor of the husband free him indeed from the ordinary penalty, but not from an extraordinary penalty, as those adduced by us above in § *Hinc cum Causa* can be seen to hold. If therefore, in our case, the husband committed a crime punishable in itself, how could he assemble a number of men forming a conventicle prohibited by the Banns, without incurring the penalty threatened by them?

The second quality and circumstance is the carrying of arms [413] [496] contrary to the specification of the Constitution of Alexander VIII, which is extended to the whole Ecclesiastical State. Still less can the authority of jurists be alleged in excuse from this threatened penalty, if the husband kill an adulterer and the wife with prohibited arms. For aside from the response given by us in the explanation of the first circumstance of assembling and of conventicle (namely that these authorities hold good and should be understood to apply only in cases permitted by law, and therefore unpunishable), we say still further

that they have very little application as regards the arms we are discussing; since the said Constitution prohibits not merely the carrying of such arms, but even their retention, manufacture, or introduction into the City and the Ecclesiastical State, under the penalty of rebellion and criminal insult to the majesty of the law.[420] And so far as we are acquainted with such cases as are permitted by law, the authority of these jurists should be understood to hold good concerning arms, the carrying of which is indeed prohibited, but not the retention and introduction under any pretext whatsoever, even the pretext of justice; as is included in this same Constitution § 1 where we read: " Or to carry them on any pretext whatever, whether of military service or of the execution of justice, and still less to keep them in one's home or elsewhere." And in § *Ad haec* it prohibits even the introduction of them: " the retention of them at home, in storehouses, and elsewhere, their introduction into the Ecclesiastical State, and their manufacture."

If therefore the retention and introduction of such arms is prohibited, even when on the pretext of executing justice, **[lxvi]** ridiculous indeed would be Franceschini's pretense that he could approach the City and the home of his wife with such arms to vindicate, after an interval, this pretended offense of honor. This is the more certain as the crime concerning such arms is grave and of itself is punished with the capital penalty, as we have proved. In this case, when the crime actually follows, if the penalty for carrying the arms is greater than for the crime itself, the penalty for the graver offense is held to apply, and includes the lighter. [Citations.]

The third circumstance is that Franceschini and the aforesaid men committed the murders in the very home and dwelling-place [417] [501] of the Comparini; because homicide is always said to be qualified when it is committed in the home of the one slain; since the home should be a safe refuge for its master, etc. Then also Franceschini entered with changed garb;[418] [504] in which case the murder is said to be committed *ex insidiis*. [Citations.]

The fourth quality and circumstance is that the said Francesca was under the power of the judge,[419] since the home, as we have said in our narrative of fact, was assigned to her under bond to keep it as a safe and secure prison. And hence she was under the protection of the court. [Citations.] And this is especially true when arguing in favor of the one who is under protection of the court, whatever may be said when arguing to his prejudice. And therefore the law holds that one under the protection of the court can not be killed under less penalty than the death [of the assassin]. [Citations.]

But all debate seems to cease since it is proven in the process that the said Franceschini approached the said home with his company of men with the thought and intent **[lxvii]** to kill not merely Francesca,

his wife, but also Pietro and Violante.[401] These, as he himself acknowledges, he hated [421] with a deadly hatred, because of the suit [260] they had brought and because [112] they had urged Francesca to poison her husband and her brother-in-law, and had kept his wife in their home, so that still further, in the continuation of the adultery,[293] his honor was offended. But aside from this, as we have said above, Francesca was placed in the said home [284] by the authority of the judge with the consent [288] of the brother of this same husband, and so the question does not enter as to whether a husband may lawfully kill the relatives, friends, and servants of his adulterous wife, even if he does suspect them of affording their leave or assent to the wife committing adultery; since the special rights and privileges conceded to the husband should not be multiplied against the wife, and be given greater scope, but rather should be strictly interpreted. [Citation.] This holds good not merely when one is arguing about the prejudice of a third party,[534] but concerning one's sole prejudice. [Citation.] In our very circumstances we read that the permission can not be passed from person to person. [Citation.] Yet we can more truly declare that such an assertion of adultery on the part of Franceschini is calumniously false; for, in the very face of death, Francesca protested, to the very damnation of her soul, that she has given no offense [355] to her husband's honor. This protestation is the more to be believed [362] since those about to die [363] are not presumed to be unmindful of their eternal salvation. [Citation.]

The other causes adduced by Franceschini himself, so far as they are true, can indeed prove hatred and enmity existing between himself and the couple, which would tend in that direction and so would serve to prove in him a cause for their premeditated murder. But this is not sufficient to excuse him from the ordinary penalty of death, which premeditated homicide altogether demands. [Citations.] **[lxviii]** And it is for this reason, because the laws prohibit private vengeance (that is, vengeance which those without public office usurp to themselves because of their hatred, by killing or otherwise injuring men) [Citations]. Raynaldus affirms that in premeditated murder the ordinary penalty is inflicted not merely upon the slayer himself, but also upon all others who aid and give help, or concur in committing the murder by their help or counsel. [Citations.]

FRANCESCO GAMBI,
General Procurator of the Fisc and of the Reverend Apostolic Chamber.

[File-title of Pamphlet 5.]

By the Most Illustrious and Most Reverend Lord Governor of the City in Criminal Cases:

Roman Murder-case.

In behalf of the Fisc, against Count Guido Franceschini and his Associates.

Memorial of fact and law of the Lord Procurator General of the Fisc.

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

[lxix] Romana Homicidii cum qualitate.

[Pamphlet 6.]

Most Illustrious and most Reverend Lord Governor:

Since the chief defense of Count Franceschini, the Accused, as we have heard, consists in the pretended plea of injured honor, by which he was moved to crime, it is the office of the Fisc to disclose the lack of foundation for this plea, in order that this atrocious and enormous crime may be punished with the due penalty.

Therefore I assume that we ought to examine the foundations on which the asserted plea of injured honor may rest; namely the flight of the unfortunate wife from the home of her husband in company with Canon Caponsacchi, with whom she was taken at the inn of Castelnuovo, and the pretended love letters which were put forward in the prosecution of Pompilia for the said flight and departure. The pretended dishonesty of the wife is drawn from these two; but along with them other proofs were brought together in the said prosecution; the latter, however, are either altogether stupid or equivocal, or else unproven. This may be inferred from the dismission of the said Francesca, his wife, merely with the precaution of keeping her home as a prison [276] [284] and of the Canon with a three years' banishment to Civita Vecchia.[271] Such action shows that in this same prosecution there was found by the Fisc no legitimate proof of dishonesty and of the pretended violation of conjugal faith, which the husband had charged against her.

And indeed, from the defenses then made and even from the trial itself, a very just cause has clearly appeared, which forced the luckless girl to flee from the home of her husband and to go back to her own home, there to live safely and quietly with her parents. Notorious indeed are the altercations [95] which, on account of the parsimony of the Franceschini home, straightway arose between the parents of the wretched girl on the one hand, and the Accused, his mother, and his brothers on the other hand. The former in vain bewailed the fact that they had been deceived by the show of no small opulence, on account of the false statement of an annual income of 1,700 scudi,[82] which was afterward shown to have no existence. Indeed, while they stayed in the home of the accused husband in Arezzo, they were so badly treated by himself and his relatives [95] that after a few months [98] they were obliged to leave it and return to the City.[100] During the whole time they lived there, contentions and reproaches throve continually among them. The Comparini were indeed excited with just indignation by the deception they had suffered. This is evident from the letters of

Abate Paolo Franceschini, which presuppose these troubles and which were considered for the Defense by the Procurator of the Poor. These prove that hostility of mind had even then been conceived against the unfortunate parents, especially the one written March 6, where we read: "I write again to you that I do not wish to imitate him in his manner of writing, not being of his mind to sow broadcast in letters such words as would merit response by deeds and not by words; and these are so offensive that I have kept them for his reproof and mortification." And further on he says: "So that if you give us trouble, which I will never believe, you yourself will not be exempt therefrom." But sufficient proof results from the letters, as the following advise. [Citations.]

[lxx] And although these letters do not make clear the nature of their altercations, yet some of them more than prove the reproaches had so increased that their bitterness grew into hatred, as is evident from the letter of February 12, 1694, where we read: "But hearing from the one side or other that the bitterness between them, not to say the hatred, is increasing." It would be all too easy for the Accused and the Abate, his brother, to prove, by showing letters written to him, that the reproaches were unjust and were occasioned by the Comparini themselves. This is apparent from the tenor of the said letter, where we read: "Because I feel that the enemy of God has put strife among them, it is improper that I should fulfill my duty toward you of a reply." But since the Franceschini did not show such letters, the presumptive truth of these same complaints and of this cause of complaint and altercation is strongly against the ones thus concealing them. In such circumstances the Roman court thus affirmed. [Citations.]

But the truth of the charge of ill-treatment toward the parents, whom he was obliged by the dowry contract to provide with food, is also to be drawn from the deposition of a servant,[110] as given in the Summary, No. 1 [cf. pp. xlix-liii]. And since this would excite the pity of any who read, it becomes all the clearer that, by such very ill-treatment of her parents, the mind of the wretched wife was greatly exasperated; for she kept grieving in vain at seeing them thus troubled; yes, and she was even prohibited from grieving.

And anyone may know that the return of her parents to the City would indeed disturb with a considerable and very just grief this wretched child who was not more than fifteen years old. For she was destitute of all aid, and was left exposed to her husband's severity, because of which she daily feared that she was in peril of her life. In vain did she have recourse to the Reverend Bishop [139] and to the Governor,[135] Summary, No. 2 [cf. p. liii]. In vain was the interposition of certain noblemen tried; which had proved utterly useless, as is evident from the letter of March 6, where we read: "But what remedy can I give you, when so many gentlemen, friendly to both parties have inter-

fered to settle the troubles and it has not turned out well?" She might indeed think that no other remedy was left her than to flee from the abode of her husband and to seek again her father's home. As therefore she fled to escape deadly peril, her flight can afford no proof of dishonesty nor of the violation of conjugal faith; for it is attributable to a lawful rather than to a criminal cause. [Citations.]

But there was another urgent cause for her eagerly desiring to seek her father's hearth, namely the ill-health of her father. She speaks of this in the letter which mentioned [lxxi] that she can not look for the company of Gregorio Guillichini, and that this task had to be remitted to the Canon [Caponsacchi] also. Hence we can well infer that she was arranging for the flight for legitimate reasons.

No reliance whatever can be placed in the letter [112] written by this same wife to Abate Franceschini. In that she thanks him for having joined her in marriage with the Accused, his brother. And she also acknowledges therein that, since the departure of her parents, she was living a life of utter tranquillity; because their evil persuasion, which was alienating her from her husband, had ceased. She also reveals a very base plan that had been proposed to her, namely to destroy the entire household. Now the wife in her sworn statement frankly confesses [467] that she wrote this letter to appease her husband, and that he had marked the characters,[114] which she had afterward traced with a pen. This statement is found in an extract from her sworn testimony as given in our Summary, No. 3 [cf. pp. liv-lv]. And a mere reading of the said letter so thrills one with horror that it is incredible [112] that the luckless girl could have written such matters to the injury and detraction of her own parents, unless she had been compelled thereto by fear of her husband. For this reason the same letter is given in our Summary, No. 4. [Cf. p. lv.]

But even just ground of fear, because of which the luckless girl was moved to flee, has come to light, namely the lawsuit [260] brought by her father against the Accused for the nullification of the dowry contract. This contract had been made on false grounds; for Pietro had believed that he was promising the dowry to his own daughter; but then, from a confession [103] made by the mother, he had found out that she was none such and that Violante had made pretense of giving birth to the child for the purpose of deceiving her husband and barring his creditors.[107] Since Pietro had assigned all his property as dowry [91] (and indeed it was of considerable value when we consider the quality of the persons concerned) he soon raised a dispute about it. And we may well fear that very grave and even deadly hatred arose therefrom. Thereby the conjugal peace, which had been disturbed by long-continued altercation, was utterly destroyed by recrudescent hatred. For a lawsuit as to a considerable amount of money, much more as to an entire property,

would produce this effect, as daily experience well teaches us and as Grammaticus and others assert. [Citations.]

Such just fear should be well considered by a prudent judge, who will take into account the circumstance of the persons and of the time. [Citation.] In our case it may be absolutely affirmed that these matters should be so considered, inasmuch as not merely a girl of tender age (as was the unfortunate wife, who was destitute of all aid and exposed to the severity of the husband, who had sought her life with a pistol [132] and had threatened her with death on trivial suspicion), but even a woman of greatest fortitude [lxxii] would be unable to bear being exposed to such constant risk of her life and would see the necessity of taking care of herself. And whatever the cause, even if it were merely supposititious, it would be enough to excuse her according to the text. [Citations.] And Canon Raynaldus holds that it is enough if one sees the signs or acts of manifest desire, or preparations thereto. How much more excusable and how worthy of pity should Francesca be considered, since she had such an urgent and such a well-verified cause for fleeing? Mogolon holds that the mere sight of arms, even though the one having them does not use them nor unsheathe them, is just cause for fear.

Nor can presumption of dishonor and of violated conjugal faith arise from the company of Canon Caponsacchi, with whom she fled, and for which flight he was condemned to three years' banishment in Civita Vecchia.[271] For the luckless girl was destitute of all aid, and the demands of her age, of her sex, and of her station in life, did not admit of her undertaking so perilous a journey either alone, or in company with any baseborn woman. For then, in escaping dangers at home, she might incautiously expose herself to even graver perils; as might have happened if while alone she had been overtaken by her husband in the journey. Nor could she find any safer companion than this very Canon, who was bound by friendship to the Canon Conti.[35] And the latter, who was a familiar friend and blood-relative of the Accused, although he had great pity upon her condition, judged it safer [145] for her to flee with Caponsacchi, whom he believed [28] to be apt and far-seeing to bring about the desired end. Otherwise she would have undertaken this flight with even greater risk. Therefore this necessary and prudent choice of the lesser evil excludes all suspicion of pretended dishonor. [Citations.]

This suspicion is also excluded by the manner in which the flight was put into effect, namely in hurrying to the City by the direct route and with the greatest possible speed.[203] For if the unfortunate girl had fled for the purpose of satisfying her lust with the same lover, the Canon Caponsacchi (as was charged elsewhere and as is repeated now even more bitterly in order to prove the plea of injured honor), she would either have delayed somewhere out of the public highway,

where she could not be seized by the Accused, or she would not have approached the City with such great speed. She would have done neither of these, unless she were making the journey for the purpose of seeking again her father's hearth, where she hoped to find security for her life and her honor. It would be far too imprudent a plan for a lover to take a wife from the home of her husband to some other place where he could not possibly satisfy his lust. [lxxiii] This improbability alone would be enough to prove the truth of the cause given by the wife in her affidavit—namely that she had fled to avoid the deadly peril in which she feared she was placed, and that she might return to her father's hearth. The Canon also gave her his aid and companionship out of mere pity,[180] and her honor was kept entirely untouched. The probabilities are always to be very much observed in arguing about a crime, or in excluding it, as the following hold. [Citations.]

Still less firmly established is the other ground for the asserted plea of injured honor, which has been offered elsewhere by the Accused on the basis of the asserted love letters.[232] These letters, it was pretended, had been written in part by that most wretched girl to the Canon, and in part by the Canon himself. All these, it was claimed, had been found in the privy of the inn at Castelnuovo,[231] where they were said to have been cast for the purpose of hiding them. Response was indeed then given by the Procurator of the Poor that the identity of the handwriting was unproved and uncertain; for the letters did not show to whom they were directed. And these responses were indeed admitted, since no punishment [272] was inflicted upon Francesca, and she was simply dismissed with the precaution of keeping her home as a prison.[284] And even though these letters, when we investigate their bearing, seem to give proof of excessive good will,[252] yet Francesca could have made pretense of this for the purpose of winning over the Canon, who was reluctant (as she herself acknowledges in her affidavit) to afford her aid by giving her his company back to the City in the execution of her premeditated flight. It is indeed quite evident that the letters were prepared for this purpose. (Summary, No. 5.) [Cf. pp. lvi-lvii.] And therefore this wretched girl, who was destitute of all aid and was placed in imminent risk of her life, should be judged worthy of all pity, if with gentle and even with loving words she tried to entice the Canon, whom she believed was well suited to afford her aid.[247] Nor can stronger proof of violated modesty be drawn from these letters written for the purpose of the flight than from the flight itself. Nor is it a new thing for the most chaste of women to use similar arts sometimes for quite permissible ends. In the sacred Scriptures we read that Judith [426] did so to deceive Holofernes, for the purpose of freeing her country. This luckless girl

could therefore do so without any mark of dishonor, for the purpose of escaping deadly peril.

We may speak still further of her confidence in her own continence as well as in the integrity of the Canon. Concerning this, a certain witness,[54] examined by the Fisc in the said prosecution at the instance of Count Guido, who was then present, testifies to hearing from Gregorio Guillichini [146] (likewise a relative of the Accused) as follows: " Signor Gregorio then added that the Signor Canon was going there for a good reason, and that therefore Signora Francesca had desired to go to Rome. And he told me also that no ill could arise from it, because there was not the slightest sin between them." The deposition of this witness, which is directly contrary to the party who had brought her into court, fully proves our point, as the following hold. [Citations.] **[lxxiv]** And therefore, since the luckless girl can be suspected of no evil from her association with Canon Caponsacchi, and since she had no other help more suitable for carrying out her plan, her dealings with him by letter ought to be excused as ordered to this end, even though we may read certain loving expressions in them. The latter, indeed, should be considered rather as courtesies adapted to winning his good will, and they should always be interpreted according to the thought of the one proffering them. [Citations.]

Still further, there is added the participation of the Canon Conti,[35] a nobleman and a relative of the Accused, who forwarded the attempt. It is incredible that he would have been willing to plot against the honor of Guido; but he would merely wish to snatch that wretched girl from imminent death because of his pity of her. And such participation is made clearly evident from the very letters which it is pretended were written by Caponsacchi.

Of lighter weight still are the other proofs of pretended dishonesty: [first] the approach of the Canon [170] to the home of the Accused at night time, for the purpose of speaking with the wife who was slain; [secondly] the kissing [206] on the journey to Rome, concerning which Francesco Giovanni Rossi,[205] driver of the carriage (commonly called calesse),[192] bears witness; and [third] the pretended sleeping together [215] in the same bed at the inn of Castelnuovo. As regards the first of these three, there is defect of proof; for it rests upon the word of a single witness only, Maria Margherita Contenti,[54] [171] and she endures the most relevant exception of being a public harlot,[172] and so she alone can prove nothing. [Citations.] And since such approaching of the house was ordered to the permissible end of removing the wretched girl from the imminent peril of death, by taking her back to her father's house, it can not be brought as a proof of illicit commerce. For the mere possibility that it was done for this purpose is enough to oblige us to take it in good part, according to the text. [Citations.]

This is especially so since the very witness who swears to this approach of the home states, by hearsay from the said Gregorio Guillichini,[146] that it was to a good end [cf. p. lxxiii], and that no sin was taking place between the Canon and the wife who is now slain. And as Guillichini was better informed, and was indeed a friend [lxxv] and, as I understand, a relative of the Accused, this excludes all suspicion to the contrary. With this testimony another deposition seems to agree, namely, that of the Canon Franceschini, brother of the Accused, who when questioned as to whether he knew if any intimacy had existed between Canon Caponsacchi and Francesca, replied: "This we never knew of beforehand; but after the criminal flight the whole town said that there must surely have passed some correspondence between them." His ignorance quite excludes and renders improbable any furtive and illicit approach to the home by the Canon Caponsacchi. For if the Accused had indeed threatened to kill his wife on account of unjust suspicion of Caponsacchi, we may well believe that Guido himself, his brother, and all the household would have kept guard for her safekeeping with all their might. And so, the said approach to the home, if it had been frequent (as is alleged), or if it had been for an ill end, would have been observed by them.

[Secondly] under this same defect of proof lies the pretended kissing of each other on the journey. As to this matter only a single witness testifies, whose excessive animus is shown by his assertion; for he asserts that he saw this at night; nor does he give any reason for his seeing it, such as that the moon was shining, or that he could see because some artificial light was dispelling the gloom. As no such reason is given, he deserves no credence, as the following observe. [Citations.] Another very great improbability is added thereto—namely, that while he was driving the carriage with such velocity that it rather seemed to fly than advance swiftly, he could not have looked back to see such mutual kissing.[206] This improbability likewise takes away from him all right to belief, according to what the following hold. [Citations.]

But the assertion of that most wretched girl herself is also well suited to exclude all suspicion of her pretended unchastity. This was made by her after she had suffered many severe wounds, in the very face of death [363] itself, at the demand of the priests and other persons ministering to her. For, according to their attestation, she asserted that she had never sinned against her conjugal faith [355] and had always conducted herself with all chastity and shame [cf. p. lviii]: "We were present and assisted at the last illness from which Francesca Pompilia, wife of Guido Franceschini, died. She was often asked by her confessors and other persons whether she had committed any offense against the said Guido, her husband, whereby she might have given him occasion to maltreat her in such a manner as to cause her death. And she always

responded that she had never committed any offense, but had always lived with all chastity and modesty." And Fra Celestino Angelo of St. Anna, of the order of barefooted Augustinians, in his testimony [353] bears even more exact witness to this constant assertion of her innocence, where he writes [cf. p. lviii]: "She always said, 'May God pardon him in heaven, **[lxxvi]** as I pardon him on earth, but as for the sin for which they have slain me, I am utterly innocent': in proof whereof she said that God should not pardon her that sin, because she had never committed it." [356] An assertion like this, indeed, given in the very face of death,[363] deserves all credence, since no one is believed to lie at such a time,[362] as the following assert. [Citations.] Menocchius speaks in these very circumstances of one suspected of heresy, saying that such suspicion is removed if in the hour of death the accused say and protest that he had lived and wished to die and to trust according to what is pleasing to the Sacred Roman Church, etc. [Citation.] And Decian cites the opinion of Alberic, who declares that by means of an assertion of this kind, made before the Cardinals, the memory of Pope Boniface had been defended, and that this very Alberic had in this way defended Galeatius, Viscount of Mediolanum.

And this is more especially true since all the said witnesses agree that this most wretched girl died with the highest edification of the bystanders, and that she had always shown the deeds of Christian perfection, as we find in the said attestations, where we read: "And from having seen her die the death of a saint." [Cf. p. lviii.] And there is another statement of the said Father Celestino Angelo, which infers the innocence of her past life from her conduct just before death. All these matters are given in our Summary, No. 6.

But, however, rightly the Accused might draw some suspicion of his wife's dishonesty from her flight and from these letters, the tenor of which seems to prove them love letters (which suspicion could excite due anger), yet this would not make excusable such truculent vengeance, taken after so great an interval. For this vengeance was taken, not merely upon his most wretched wife, but also upon her parents, who were entirely off their guard and quite undeserving of such a fate. And these murders were attended with such grave circumstances, aggravating the crime, that he would have to be punished with death even if he had not confessed the murders. For although just anger because of violated conjugal faith usually moderates the penalty for a husband killing his adulterous wife, yet one can no longer argue for total impunity after an opportunity to take vengeance on the adulterer and adulteress has been thrown away. [Citations.]

But an especial and indispensable requisite is that the wife **[lxxvii]** be taken in adultery, according to the text. [Citation.] "For thus it wishes this power to lie with the father, if he take his daughter in

her very sin." Labeo also approves this, and Pomponius writes that she may be killed when taken in very licentiousness, and this is what Solon and Draco say. [Citations.] Much more does this hold good in the case of a husband, whose wrath may be kindled much more easily against a wife by sinister and unjust suspicion conceived about her. For the husband is not always accustomed to take good counsel for the wife, which the law presumes that the father does by natural instinct, etc.; and it excuses the father only when he kills his daughter along with her defiler, or inflicts wounds unhesitatingly upon her.

And this is so true that it is not enough if the wife be found only in acts that are remote from, or merely preparatory to adultery, as authorities commonly affirm. [Citations.] John Teitops holds thus, and I think it well to quote his words, since the Judges may not have him at hand, and he thus explains the words of the said text: "Therefore they argue that acts preparatory to adultery do not suffice, but the obscene commingling of limbs is required." And after citing his authorities, he adds: "And this is more clearly evident from the words of Solon as given by Lucian, the Eunuch," where we read: "Unless they lie who say that he was taken in adultery." And then he criticizes the opinion of Accursius, who asserts that acts preparatory for adultery are enough. And in the second paragraph after this decision is given he asserts that his opinion should be understood to be concerning immediate preparations, and he so explains his decision, where he says: "From the taking of the adulterer alone and naked with her alone and naked, and lying in the same bed, violent and certain suspicion of adultery arises, wherefrom the sentence of divorce may be granted."

But the laws adduced (at letters I & J) show that strong suspicion does not indeed suffice. For this sort of discovery is the true taking in the act of adultery. And from a civil case under the said letter, one argues weakly for proof in a criminal cause. [lxxviii] For no one can be condemned, much less killed, on suspicions alone in the absence of law. And violent suspicion is not indubitable ground for proof, such as is required in criminal cases. But indeed such suspicion is fallacious, because persons might be found to act thus for the purpose of committing adultery, and yet not actually to have committed the adultery, as Gravetta and others say.

The Accused might indeed have contended merely for the tempering of the penalty if he had killed his fugitive wife in the act of taking her at the inn of Castelnuovo [222] in company with Canon Caponsacchi. But when he neglected to take vengeance with his own hand and preferred to take it by law, he could not then kill her after an interval. This is according to the text [Citation], which affirms that one can not put off vengeance from day to day. [Citations.] Farinacci asserts that it was so held in practice, lest men should be given the opportunity of avenging

their own wrongs. And he confutes Bertazzol, who places on the same footing a case of taking in adultery, and says that the wife may be convicted of it provided that there be no doubt of it. Nor may the suspicion of the husband, which gave a strong ground for the difference, be unjust or too ready. Because just grievance, exciting a wrath which usually disturbs the mind of the husband, is verified by the actual taking of the wife in adultery or in acts very near to it and not after an interval, although his suspicion may be very strong. And so the laws which excuse a husband because of just and sudden anger can not be extended to cover vengeance taken after an interval. For in the latter case neither the impetuosity nor the suddenness of the anger is proved, but the murder is said to be committed in cold blood. But if for the purpose of restraining the impetus of raging anger, lest the husband take vengeance on his own authority, he is not excused from the penalty of the *Lex Cornelia de Sicariis,* provided he kill his wife after an interval, how much less excusable will he be if after choosing the way of public vengeance by imprisoning his wife and her pretended lover he shall, after a long intervening time, slaughter her and her parents so brutally?

It should be added, for increasing his penalty,[507] that as regards the unfortunate parents there was no just cause for killing them unless he wishes to consider as such the lawsuit [260] which they brought for the nullification of the dowry contract because of the detection of her pretended birth. But this cause rather increases [421] the offense to the most atrocious crime of *læsa majestas,*[420] because of the utter security which the Pontifical Majesty wishes to afford to all litigants in the City. This point is found in the well-known decree of Alexander VI where we read: " The inhumanity and savagery which thirsts for the death of others is horrible and detestable," and in the end we read: " In offense of the jurisdiction of his Divine Majesty, and to the injury of the Apostolic Authority." And, " They incur *ipso facto* the sentence of the crime of *læsa majestas.*" And a little later: " And they may always be distrusted [lxxix] in all their good deeds by every one, and may be held as banditti and as infamous and unfit."

Very worthy of consideration, also, is that other aggravation of this inhuman slaughter, namely, that it was committed in their own home,[417] which ought to be for each person the safest of refuges, according to the text. [Citations.] And Cicero elegantly says: " What is more sacred, what is more guarded by all religious feeling, than the home of each of our Citizens! Here are our altars, here are our hearths, here are our household gods, and here the sacred ceremonies of our religion are contained. This refuge is so sacred to all that it would be base for anyone to be snatched hence." Much more is this true as regards the wretched wife, who was held in that place as a prison,[419] with the approval also of the Abate Franceschini.[288] And hence the public safe-

keeping may be said to be violated thereby, and the majesty of the Prince wounded,[420] since the same reasoning is observed as regards a true and formal prison, and a prison assigned by the Prince, as the following assert. [Citations.]

Finally we should also consider the aggravation of "prohibited arms," [413] with which the crime was committed. This of itself demands the death penalty, even though the principal crime should otherwise be punished more mildly, as Sanfelici advises, stating that it was so adjudged. [Citation.]

GIOVANNI BATTISTA BOTTINI,
Advocate of the Fisc and of the Apostolic Chamber.

[lxxx] [File-title of Pamphlet 6.]

By the Most Illustrious and Most Reverend Lord Governor in Criminal Cases:

Roman Murder-case with qualifying circumstance.

For the Fisc, against
Count Guido Franceschini and his Associates.

Memorial of the law in the case by the Advocate of the Fisc.

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

[Pamphlet 7.]

My most Illustrious and Dearly Beloved Master:

No. 1.[138]
Letter of the Honorable Marzi-Medici, Governor of Arezzo.

Your favored letter of the twenty-fourth of last month has reached me, and I am exceedingly sorry for the uneasiness in which you hint you are placed by the maledictions which Signor Pietro Comparini and his wife have disseminated [109] throughout Rome, concerning the ill-treatment they say they suffered in your home while staying in Arezzo. As your letter questions me for true information, I answer with all frankness, that both among the noble connection and in Count Guido's home they were treated with all respect and decorum. The cause of the first disturbance [95] which sprang up between them and your mother and brothers was that Signora Violante,[96] a few days after her arrival, presumed to domineer over the house and to keep the keys of everything, and in fact to turn out of house and home Signora Beatrice, your mother. With good reason, neither of the brothers was willing to consent thereto, and this gave occasion for the first insults and domestic broils. These afterwards increased when they saw that Signor Pietro [97] had given over the company and conversation of the best people of the city, and had struck up acquaintance with the most vulgar. And with them he began to frequent daily all the taverns there. This cast discredit upon him, and was little for the good name of the Franceschini. Of much greater scandal were the many [140] flights and petitions made by Guido's wife, their daughter, to Monsignor the Bishop.[139] These were made for no other reason than that neither she nor her parents wished to stay any longer in Arezzo, but desired to return to Rome. When she had been rebuked by that most prudent Prelate, he always sent her home in his carriage.[142] It is true that ever since the Comparini left this City until the present time the Signora has conducted herself with much modesty and prudence. From this fact everyone infers that the poor child was led to such excesses by her parents, as she herself declares to everybody. Now she detests even the memory of them. Therefore, she is getting back into the good opinion of everyone, and especially of those ladies of the city who had ceased having anything to do with her. Finally these same Comparini had taken away all her jewelry from the Signora, which I forced [137] them to [lxxxii] restore. Altogether, such and so great are the scandals to which they have given rise before the whole city in the lapse of the few months they have stayed here, that I write you only a few of them. I assure you that with them your brothers have

had the patience of martyrs. Accordingly when I saw that they had become incorrigible, and were the talk of the town, and that they might force your brothers to commit some excess against them, for the maintenance of good discipline, I availed myself of the authority vested in me by His Serene Highness, and threatened [137] them with prison and punishment unless they behaved themselves. After these threats, which they evidently merited and which might have overtaken them, they decided to go to Rome,[100] as they did a little later, leaving behind them in this city a very bad reputation.

As for the rest, there is now in your home an utter quietude, and the Signora lives with exemplary prudence, detesting the ill example she had shown the ladies of this city, and she confesses freely that it was so commanded by her parents. In my judgment, it is the hand of God that has freed your family from such turbid heads. This is all I can here put down, out of much else there is to say about it. Therefore rest at ease, and believe me that the discredit has been entirely their own. I need only sign myself, with all my heart, to your most illustrious self,

Your most devoted and obliged servant,

VINCENZO MARZI-MEDICI.[136]

To Signor Abate Paolo Franceschini, Rome.
Arezzo, August 2, 1694.

No. 2. Deposition of Francesca.

I will tell your Excellency why I have fled from the home of my husband. Here in Rome, three years ago, I was married by my father and mother to the said Franceschini, and after I was engaged to him he stayed here in Rome for two months without consummating the marriage.[89] Then with my father and my mother I was taken by my husband to Arezzo,[94] because in the marriage contract [93] it was agreed that my father and mother should go and live in Arezzo, as they did. After they had remained [lxxxiii] there four months,[98] they departed and returned to Rome,[100] because of the ill-treatment they suffered, at the hands not only of my husband, but of the others in his house.

I was left behind in Arezzo, and when about a year had passed after the consummation of the marriage, as I did not become pregnant,[116] my husband and my mother-in-law Beatrice,[49] began to turn against me because I had no children. He said that because of me their house would die out and that he could not hope for an heir by me after a while; for by chance he had heard my father say that during a girlhood sickness certain seeds had been given to me as medicine, which possibly hindered me from having children. For that reason I came to be con-

tinually mistreated by my husband and mother-in-law,[49] though I answered that I was not to blame for that. Yet they continued always to threaten my life and, without any real occasion, they sought every pretext to maltreat me.

Then my husband began to be jealous [123] of me and forbade me to show my face at the window.[124] And to remove that occasion of jealousy I never showed my face save when it was absolutely necessary.[126] So one day, while we were on the balcony, he said to me that I was staying up there to make love, without telling me with whom. I replied that these were mere pretexts, and that from that place one could see only the street, without looking into the windows of the houses; for the loggia was entirely upon the roof.

And then because the Canon Caponsacchi,[128] with other young men of the place, used to pass before our house [152] and stop to talk with certain hussies,[32] who were standing there in front, my husband began to fume with anger at me because the said Canon kept passing there as above,[151] although I was not at all to blame. His suspicion increased all the more because, while we were in a great crowd at the play [131] one evening, Canon Conti,[35] the brother of the husband of my sister-in-law, threw me some confetti. My husband, who was near me, took offense at it—not against Conti, but against Caponsacchi, who was sitting by the side of the said Conti. Then because Conti frequented our house, as a relative,[35] my husband took offense at him likewise; and this so much so that I, being aware of it, retired to my room [127] whenever he came to our house, that I might not have to take even more trouble; [lxxxiv] but my husband was not thereby appeased, but said that I did this as a trick, and that his suspicions of me were not removed. He began anew to torment me so, on account of Caponsacchi, that I was reduced to desperation and did not know what to say. Then to remove that occasion for his ill-treatment, I spoke to the said Caponsacchi [156] one day as he was passing our house and begged him not to pass that way,[129] that he might relieve me from all the distress I suffered at the hands of my husband on that account. He replied that he did not know whence my husband had drawn such a suspicion, as he used to pass along there on other affairs, and that, in short, Guido could not stop his passing along the street.[130] And although he promised me not to pass along there, he continued to do so. But I did not show my face at the window. Yet with all this my husband was not appeased, but continued to maltreat me and to threaten my life, and he said that he wished to kill me.[125]

A. She tells of her husband's threats because of her ardor for her lover.

At the time of the affair of the play told above, as soon as we had returned home, he pointed a pistol at my breast saying: [132] "Oh

Christ! What hinders me from laying you out here? Let Caponsacchi look to it well, if you do not wish me to do so, and to kill you."

Furthermore, at the beginning of these troubles I went twice [140] to Monsignor the Bishop,[139] because he might have remedied it in some way; but this did no good, because of his relation with the house of my husband. And so as I was a stranger in that city and did not know how to free myself from these perils and abuses, and as I feared that if Guido did not slay me with weapons he might poison [133] me, I planned to run away and go back to Rome to my father and mother. But as I did not know how to accomplish this, I went about a month later to confession to an Augustinian Father,[144] whom they call Romano. I told him all my distresses, imploring him to write to my father in my name, as I do not know how to write, and to tell him that I was desperate, and that I must part from my husband and go to him in Rome. But I had no response.

B. She lies asserting that she does not know how to write.

Therefore, not knowing to whom I might turn to accomplish my desire, and thinking that no one in the place would assist me, because of their relationship or friendship to my husband, I finally resolved to speak of it to the said Caponsacchi,[149] because I had heard said that he was a resolute man. Accordingly, as he was passing one day before our house, at a time when my husband was out of the city, I called him [179] [lxxxv] and spoke to him from the stairs. I told him of the peril in which I found myself on his account, and begged him to bring me here to Rome, to my father and mother. He replied, however, that he did not wish to meddle at all in such an affair,[182] as it would be thought ill of by the whole city, and all the more so as he was a friend of the house of my husband. But I implored him so much and told him it was the duty of a Christian [179] to free from death a poor foreign woman. At last I induced him to promise me that he would accompany me as above. Then he told me he would secure the carriage, and when that had been arranged he would give me a signal by letting his handkerchief [183] fall in passing before our house, as he had done before. But the next day went by,[181] and although I stood at the blinds he did not give the signal. When the day following had also passed, I spoke to him again as above, and complained to him that he had broken the word he had given me.[181] And he excused himself, saying that he had not found a carriage in Arezzo. I answered him that, at any rate, he should have procured one from outside, as he had promised to do. Then the last Sunday of the past month,[184] he went by our house again and made the signal with the handkerchief, as he had promised. And so I went

C. She confesses the strength and audacity of her lover.

D. She confesses a conversation with her lover.

E. She confesses a new conversation with her lover.

to bed with my husband that evening, and when I had assured myself that he was asleep [186] I arose from bed and clothed myself. I took some little things [199] of my own, a little box with many trifles inside, and some money, I know not how much there was, from the strong-box.[198] These were, moreover, my own, as is evident from the list of things and moneys made by the treasurer of Castelnuovo. Then I went downstairs at dawn,[188] where I found Caponsacchi, and we went together to the Porta San Spirito. Outside of it stood a carriage with two horses and a driver,[192] and when we had both entered the carriage we journeyed toward Rome, traveling night and day [194] without stopping until we reached Castelnuovo, except for them to take refreshment and to change the horses. We arrived at dawn,[212] and were there overtaken by my husband as I have told heretofore to your Honor. The said Caponsacchi is not related in any degree to my husband, but was certainly a friend.

F. The lie about the arrival at Castelnuovo.

G. The lover is not a relative of her husband.

The said Caponsacchi, before the said affair, did not [lxxxvi] send me any letter,[160] because I do not know how to read manuscript, and do not know how to write.

H. New lies, that she did not receive letters from her lover, and that she does not know how to write.[235]

Before the said affair, I did not at all send a letter of any sort to the said Caponsacchi.[251]

I. Another lie, that she did not send letters to her lover.

When again put under oath, she responded: While I was in Arezzo, I wrote at the instance of my husband to Abate Franceschini, my brother-in-law here in Rome. But as I did not know how to write,[235] my husband wrote the letter with a pencil and then made me trace it with a pen and ink it.[114] And he told me that his brother had much pleasure in receiving such a letter of mine, which had been written with my own hand. And he did this two or three times.

K. She does not know how to write, and her husband had traced the letter.[466]

If your Honor should cause me to see one of the letters written by me as above, and sent to Abate Franceschini, I should clearly recognize it.

And when it was shown, etc., she responded: " I have seen and carefully examined the letter shown me by the order of your Honor, which begins—*Carissimo Sig. Cognato, sono con questa*—and ends *Francesca Comparini ne Franceschini,* and having examined it, it seems to me, but I can not swear to it as the truth, that it is one of the letters written by me to Abate Franceschini, my brother-in-law, in conformity to my husband's wishes, etc.

And after a few intervening matters, etc., when questioned, etc., she replied: " I have never sent letters of any sort by the said Maria to anyone." [154]

L.
Another lie about the arrival at the tavern of Castelnuovo.

In all truth, I arrived at Castelnuovo at the blush of dawn.[212]

We shut ourselves in there at the tavern of Castelnuovo for the space of more than an hour.[215] During that time we stayed in a room upstairs.[216]

M.
New lies that she did not lie down to sleep at the Inn of Castelnuovo.

And after a few other matters, when questioned, she replied: "I did not go to sleep, nor lie down to rest in the tavern at Castelnuovo during the time I stopped there, as above."

I know that your Honor tells me that the authorities pretend further that I slept all night in the abovesaid tavern of Castelnuovo in an upstairs room, in which Canon Caponsacchi also slept. And I say and respond that no one can truly say so, because I did not rest at all in the said tavern, and stopped there only for the time stated above.

[lxxxvii] [The letter of Pompilia to Abate Franceschini occurs also on page lvi, and is translated on p. 44.]

[lxxxviii] Outside to Abate Paolo Franceschini, Rome: but inside:

No. 4.
A letter of Francesca written to Abate Franceschini.

My very dear Sir and Brother:

I have received the fan which you sent, which has been most welcome to me. I accept it with pleasure and thank you for it. It displeases me that, without reason, my parents tear our house to tatters. I for my part am well and am happy in not having them now to stir me to evil. I wish well to all our house, in the sacred fear of God. In fact you may well laugh at the maledictions of my parents. Command me, who reverence you from the bottom of my heart. Arezzo, July 19, 1694,

Your deeply obliged servant and sister-in-law,

FRANCESCA COMPARINI FRANCESCHINI.

No. 5.[34]
The examination of Canon Caponsacchi.

I had to go to Rome on my own business,[153] and as I told my secret to Giovanni Battista Conti,[35] a relative of Franceschini, who frequented the home of the latter, Francesca might have learned about it from the same Canon, although there was talk about town of my coming to Rome, which was to follow soon. Hence a letter,[154] sent to me by the said Francesca, was brought one day by a certain Maria,[54] then a servant

of the Franceschini. In it she told me that she had heard of my going to Rome and that, as her husband wished to kill her, she had resolved to go to Rome to her father; and not knowing with whom she might intrust herself, she asked me to do her the service of accompanying her as above. I answered her that I was unwilling to do anything of that kind,[160] or to expose myself to such a risk;[182] and I sent her a reply by the same servant. I do not remember the precise time that she sent me the above letter. Thereafter, when I passed the house, she continued making the same request to me,[167] by flinging from time to time from the window a note that repeated the request. And I replied to her, sending the response by the same servant, and telling her that I did not care to involve myself in such affairs. And therefore she finally cast me another note from the window, which, as I learned, was seen by a working-woman living across the street, whose name I do not know, and she carried it to the husband. The same servant was then commissioned to tell me that there had been a great commotion in the house because of it, and that the sister of Guido, who had been married into the house of Conti,[35] had declared furthermore that that servant had carried the letter to me. She also told me that Guido said he was going to kill **[lxxxix]** his wife [125] in some way after a little while, and that he would also be avenged on me.[168] Accordingly, with this purpose, to free myself from every difficulty and danger, and also to save from death the said Francesca,[180] I resolved to leave for Rome and to accompany her thither, conducting her to her father. And so one evening—I do not remember the exact time—as I was passing their house I gave her a letter, which she drew up to the window with a string. In it I told her that to free her from death I would accompany her as above. Another evening she threw to me from the window a letter in which she renewed the above insistence, declaring to me that her husband was always threatening to kill her; she would therefore have to receive the favor of my company as above, of which I had spoken. And finally, the last Sunday of the past month of April,[184] while I was going by their house and she was standing at the window,[177] I told her that I had secured the carriage for early the following morning and that I would have it await her at the gate of San Clemente.[191] Accordingly, at about one o'clock [187] in the morning, she came alone to the said gate. We entered the carriage and turned along outside of the city wall to go to the gate of San Spirito,[193] which is in the direction of Perugia. This carriage belonged to Agostino, tavern-keeper in Arezzo, and a driver, surnamed Venarino,[205] the servant of the said Agostino, drove it. I had had him leave the city Sunday evening at the Ave Maria. Then we pursued our journey without stopping to spend the night anywhere,[194] and we paused only as it was necessary for refreshing ourselves and changing horses, until we reached Castelnuovo [210] on Tuesday evening, the last day of the said

month of April.[211] Then because Francesca said that she was suffering some pain, and that she did not have the courage to pursue the journey further without rest,[213] [218] she cast herself, still clothed, upon a bed in a chamber there, and I, likewise clothed, placed myself on another bed in the same chamber.[215] I told the host to call us after three or four hours, for resuming our journey. But he did not call us, and the husband of the said Francesca arrived in the meantime, and had both of us arrested [222] by the authorities, and from there we were taken to Rome.[255]

I have not spoken in Arezzo to Francesca at other times than those I have recounted above to yourselves.[178]

E.

The husband of the said Francesca is not related to me in any degree whatsoever.

The lover is not related to Count Guido.

[xc] I have no profession at all, but am a Canon of the Pieve, of Santa Maria of Arezzo,[27] and am merely a subdeacon.

When I was imprisoned at Castelnuovo, certain moneys, rings, and other matters were found, of which a memorandum was made by the authorities.

I have never written any letter to the said Francesca, except as stated by me above.

The letters sent to me as above by the said Francesca were burned [246] by me in Arezzo.

Although in the prison of Castelnuovo, where I was placed, a diligent search was made by the authorities and also by the husband [230] of the said Francesca, nothing at all was found there.

The said Francesca when leaving Arezzo carried with her a bundle of her own clothing and a box, in which she said there were some trinkets,[199] but I did not see them. And she had it in a handkerchief with certain coins, which were then described at Castelnuovo by the Treasurer.

I do not know precisely by whom the letters [245] sent to me by the said Francesca were written,[243] but I suppose that they may have been written by her, but I do not know whether she knows how to write.

In the chamber [215] of the inn at Castelnuovo where we stopped, as I said in my other examination, there were two beds. Only one of these was provided with sheets by the chambermaid of the tavern, that it might serve for Signora Francesca. I did not have sheets placed on the other, because I did not care to undress myself. Nor did she undress herself, as I said in my other examination.

If I should see one of the letters written by me to Signora Francesca, I would know it very well.

I have seen and I do see very carefully these two letters which have been offered as evidence in this suit and have been shown to me by the

order of your Honor. One [cf. p. xcviii] of them begins *Adorata mia Signora, vorrei sapere,* etc., and ends *mi ha detto il Conti.* Having well considered this letter, I declare that it was not written by me, though the handwriting of the same has some resemblance to my own.[244] I have also seen the other letter [cf. p. xcviii], which begins *Amatissima mia Signora, Ricevo,* etc., and ends *questa mia,* and having well examined it I say that the same was not [xci] at all written by me, and is not in my handwriting.[244] Furthermore, it has not the slightest resemblance to my handwriting.

I have never spoken in Arezzo to Signora Francesca, except when I spoke to her at the window,[177] as I said in my other examination.

I have never received other letters [242] from the said Signora Francesca concerning other matters than her flight to Rome, as I have said in my other examinations.

I marvel that the Fisc pretends that, before the flight, several other love letters [243] had been sent to me by the said Signora Francesca;[157] for she was a modest young woman and such actions would be out of keeping with her station and her birth. And therefore I declare that the abovesaid pretense is false and without foundation.

I turn back to say to your Honor that in the prison [231] of Castelnuovo there was not found by the authorities anything whatsoever. And if your honor tells me that certain love letters were found, which the Fisc pretends are those sent me by Signora Francesca, I say and respond that it is not at all true.

Outside: To the Most Illustrious and Most Respected Signor Paolo Franceschini, Rome.

And inside:

My Most Illustrious and Respected Signor:

No. 6.[143] Letter of the most Reverend Bishop of Arezzo.

I understand why you desire to tell me about the quarrels [95] which have arisen between Signor Guido, your brother, and Signor Comparini. And I can not but pity you for the trouble you have had in a case so rare, and indeed so unprecedented. The Signora, your sister-in-law, had some recourse to me,[140] [139] but her great excitement, taken along with the excessive passion of her mother, revealed to me that the daughter had taken this step entirely by mere instigation. So I tried to make peace between them, thinking that when the instigations of the parents were removed she might be brought to right reason. I believed

this the more readily, as she was of tender age. And the more she spoke, and the more she made outcry, that much the more had she been urged thereto by the instigation of her mother. And that she might not be excited even more, I had her taken home in my carriage twice.[142] I have some knowledge of this because Signor Senator Marzi-Medici,[136] who presides over the laic government of this town for our Most Serene Grand Duke [xcii], has told me all. And I need only add that I reaffirm what I have written with entire sincerity. Wishing for new chances to serve you, I affirm myself

To you, Sir,

Your Most Obedient Servant,
THE RIGHT REVEREND BISHOP OF AREZZO.

Arezzo, September 15, 1694.

No. 7.[232] Reciprocal love letters.

My dear Sir:

I do not multiply my assertions for the purpose of proving my love to you, because my resolution and your desert is enough proof of it. My affection no longer has any rein, etc. May grace be to him who gives grace.

My own Signor:

I tell you, do not be surprised if my mother was at the window, because she was looking at the one who was setting the sofa in order. And therefore you can pass here without fear. When more at my leisure, I will write you some fine matters, etc. When they tell me anything, I will advise you of it.

My Adored Mirtillo,[162] My own Life:

I pray you pardon me that I did not look at you yesterday when I was at the Cappucchini, because I saw that the two were watching to see if I would look at you. Therefore I suffered much pain in not being able to look at my Sun. But I saw mine own with my heart, in which I have you engraved. I remain as I am and shall be

Your devoted servant and faithful sweetheart,
AMARILLIS.[163]

My well-beloved:

I have received your letter, which has given me much pain, etc., that the Jealous One [239] might have seen the letters. And he did see them, but did not open them, because they were tied up together, and he

supposed that they were other letters, and did not take them into his hand. [xciii] This fellow is telling it because he would like you to get angry with me, etc. You ask me if I am of the same thought, and I tell you yes. If you have not changed, I am ready to do what I have told you, etc. Then soon, if they continue to drink red wine,[240] I will tell you so. Whether you are of the same mind still, or have repented of it, I am content to do what you wish, etc. I remain as I have been

YOUR FAITHFUL SWEETHEART.

Most beloved Signor:

I do not know why you did not pass here yesterday evening; for I took my stand at the window and saw no one. I forsook the window because the Canon, my brother, was there. I left there to go to the other windows lest he might see me, etc. But you turned toward the door of your sweetheart, because there is the one adored by you. Conti has asked me for those octaves,[253] which you gave me, etc. Therefore tell me if I must give them to him or still keep the precious verses for myself. And I remain as I am and shall be

Your faithful, yes, your most faithful Sweetheart,

AMARILLIS.[163]

I forgot to tell you that the Signora my mother no longer has the fever, and is drinking wine, but by herself. Her wine, however, is red like ours.[240] Therefore tell me what to do, that I may do it. I close with sending you a million kisses. But I know that in this way they are not so dear as a few would be if you would give them to me. But those of the Singer [33] are very dear to you, though I tell you that they are poisoned, etc. Be the scrupulous one with others that you have been with me. For you have reason for this with others, but you have no occasion for it with me, etc.

Most Cherished Narcissus:

This evening I received your letter, and it gives me great comfort to know that you are not angry, etc. I do not know when he will give it to me, but if he gives it to me I will give it to you. The Jealous One [237] [239] is away,[159] but I shall still be here, and all the rest; but because my mother has not found a servant, etc., they have said that they will stay here a while. Therefore you will not pass [?] out of my mind because of my not seeing you for a while. But whoever loves [xciv] from so good a heart as I do, will keep one in mind. I pray you pardon me if I make myself tedious by writing too often. Acknowledging myself as I am, I remain

YOUR DEVOTED SERVANT AND MOST FAITHFUL SWEETHEART.

Most beloved Signor:

If you could imagine with what haste I have written to you these two verses,[253] etc. I met Signor Doctor, as usual. He asked me where I was going, and along the street he asked me why I had written scornfully to him. I told him that he deserved even worse, because he had given evil deeds and good words; for he had said he was fond of me and that he wished him and the rest of them in Sovara, etc. He replied it did not come from this one, but on account of another gentleman whom I used to like, who was more gallant than he. I answered him that if that one was not more gallant than himself, he was at least more faithful, etc. Professing myself, as I have ever been faithful, etc.

My Adored and Revered Signor:

I wish by this letter of mine to excuse myself from my error in sealing the letter which I sent to Rome, etc. I tell you that they have not found any letter at all of mine, because I do not let them lie around the house, but give them to the flames.[246] And while I keep them, I place them in my bosom. This is not an excuse, why you should surmise [it to be] one of my letters; for I tell you that I give it place in my bosom, etc. Inasmuch as one of the family may be behind the curtain, as I believe, do not make any signal when you are under the windows. I shall be at the window this evening, or else at the blinds, and when I shall see you I will show myself at the window. But it is necessary to be prudent, that he may not see me. Because he has told me that if he sees me he will wish to do such things as not even Æneas, the Trojan, did. To avoid arousing his suspicion I will not stay there. But I pledge myself

Your Most Devoted Servant.

My Longed-for Blessing:

If your saying that I do not love you, because you do not know me, is not an error, it is at least displeasing to me. Hear me, my dear: I am offended with you, because either you consider me blind or you do not consider me amiable. You can not say of a truth that I do not love you, nor can you say truly that any one does love as much as I love you. Look into my eyes, and you will be astonished; for when bright with my tears they will be faithful mirrors to reveal to you that your face is copied there (in which an outline of it is made in the Sun), that your whiteness is snow in comparison with the Milky Way, that the Graces have directed your movements by their own hand, that Venus in fashioning you took the measure of your limbs with her own girdle. Ah yes, I love you so much that in one respect I would wish alone to love you in the world, because it seems to me that I could love you for all in central

Latium. I should like that all might love you, because you would see that all of them put together can not love you as much as I alone do. My breast is envied by every other part of me, because it alone is able to love you. These are matters one can not know by mere hearing; they are matters to render one excusable to any one else who does not believe it. But you are a cruel beauty; for if you see a face composed by the miracles of angels you should not consider it a lie if a heart is found fashioned by the miracles of love, etc. I leave you a thousand thousand kisses.

My well-beloved:

I pass by compliments, because I can not match your very gallant verses,[253] which are so far different from what I merit. You tell me that you wish to know what has happened in our house. I tell you that nothing has happened, so far as I can see, because none of them have said anything to me—none of them. But Signor Guido seems rather well disposed toward me than otherwise, and therefore I can not find out whether they are angry with me. Let my brother-in-law lock the door; he does it often, etc. If you do not wish to pass by here any more, I leave that to your own judgment, and I will suffer quietly the pains which are pleasing to you. Therefore I tell you that you may do as you wish. For as gold is refined in the fire **[xcvi]**, so love is refined by suffering. I can well say that I shall suffer pain at not seeing you as I have been accustomed, etc. With a loving kiss, I remain as I have ever been, your most sincere sweetheart and your most faithful slave.

I had quite forgotten to tell you that I stay in the same room as at first, and that Thursday evening I went to bed at eight o'clock, and so you did not hear me enter the room. I told the servant that she should make the signals agreed upon, etc.

Signor Guido returns Saturday [159] [237] morning and you may pass this evening at ten o'clock or sooner, when you shall see the light in the room, etc.

My well-beloved:

I received your letter, which was most pleasing to me, as are all the rest you have sent me, etc. I see that you like the Pastor Fido. But I would wish you to imitate him, and I will imitate another Vienna. I hear from her that you will want to come to see me at the Villa, etc. If I could only bring it about, I would more willingly be your wife than your servant. You tell me that Conti is unwilling to bring any more letters for you. But let me inform you that I am wheedling him, and I have the wits to bring it about that he will carry them to you; because I say two kind words to him and he is charmed and will do what I

wish. You tell me that I shall let a cord down through the lattice, but you do not tell me what evening, etc. But I tell you that the Jealous One [239] has gone to Sovara, if I might speak to you. But the Confessor is utterly unwilling, and for that reason I do not have you come here, because now the street door is no longer opened, but you might be able to open the back door,[158] etc. But that Frate [51] does not wish it, and you do not. I thank you for the kisses you send me, but if you yourself could give them to me, I would hold them dear. And I give you others in reply, as many millions as you have given to me.

YOUR MOST FAITHFUL SWEETHEART.

I do not know what name to give myself, whether Vienna, or Amarillis or Dorinda, or Lilla, but I wish to call myself Ariadne, for I believe I have had to be such. I wish to call myself such, only so you are not a Theseus, but a chaste Joseph, or a dear Narcissus, or an Ilago, or a Fedone. Adonis indeed took pity on Venus, but I am none such, but even a Medusa. Therefore I deserve, etc. If you have read Tasso, you will know who this was, etc.

[xcvii] My Beloved Idol:[161]

I know of the affairs which have happened to you. I do not take it in bad part when you tell me that it is not possible to make my mother sleep, while she is ill and drinks no wine,[238] and therefore can not sleep. It may be in the next few days that she will get well. Then I will inform you of it, etc.

Your faithful Sweetheart,
AMARILLIS.[163]

My Adored, Beloved, and Revered Heart:

I am confused at such praise, etc. You write to me oftener than you might about the Doctor. You offend me by saying that I will love him again. I tell you as sure as the Sun shall rise upon this world, I have not the heart for another such blow. But he who does ill, thinks ill, etc. As to what you wish to know about the wine, I tell you that it is red [240] now, but I do not know how much longer it will be so, but I will let you know about it. Sending you a thousand and a thousand, and a million of kisses, I remain, etc.

Come this evening at seven o'clock,[165] because I wish to speak to you, and cough when you are under the window.

AMARILLIS.[163]

She [164] is bursting because she can not say, as you tell me here, that she is white as milk, and that you are darker [30] than I.[17] If I had been you,

I might have called you ivory, as I do call you. Watch this evening lest it be the Jealous One,[239] and not myself. Therefore I will cough, and if you do not hear me cough, do not move.

I let you know that Signor Guido is going out of the city,[166] and will be gone several days. Therefore I pray you come this evening about seven o'clock.[165] And when you are under the window, cough and wait a little while, that I may not make a mistake. He goes away Monday morning, etc.

My Dearest and Most Deserving Well-beloved:

I give the infinite thanks of Rosalinda, etc. I wish you to know that he makes me signals along the Via del Poggio, etc., and not because I wish to make proof of your love, which I know very well. You are as constant as myself, and therefore I do not wish to make these proofs, etc. So that you can not say that I no longer love you, because all my good wishes for Signor Guido are turned to you, who deserve it.

AMARILLIS.

[xcviii] My adored Signora:

I wish to know whether you can leave Sunday evening, that is, to-morrow evening, for if you do not go away to-morrow evening, God knows when you shall be able to do so, because of the scarcity of carriages, owing to the fact that on Wednesday the Bishop [176] departs with three carriages. Therefore, if you can go, as soon as you have read this letter of mine, return to the window and throw it to me as a sign that I may reserve a carriage beforehand, which may be secured from some one or other. If I secure the carriage to-morrow, in passing along there I will let fall my handkerchief [183] one time only. Then for the rest, to-morrow evening I will wait from eight o'clock in the evening on as long as necessary. And as soon as you see that they are sound asleep, open the door for me, that I may help you make up your bundles and collect the money. Above all, try to put some into all their cups, and do not yourself drink it.[238] And if by ill luck they shall find it out, and shall threaten you with death, open indeed the door, that I may die with you or free you from their hands. And praying God that he will make this design of ours turn out well, I declare myself as ever.

Letter of the lover.

Your Most Faithful Servant and Lover

MIRTILLO.[162]

It is a very bad sign that the Jealous One [239] seems pacified, and that he has said that you were at the window. Because he will wish to find out in that way what you are doing at the window, and for what purpose

you are there. For Conti [35] has told me that now he is more jealous than at first, and that if he finds out about anything he will wish to avenge himself by putting us to death. He wishes to do the same to me, and that is what will happen. Here then has come at last the breaking of the chord.

Most Beloved Signora:

I have received your note full of those expressions (and then loving words follow). Be pleased to receive me into your bosom, in which I rest all my affections, etc. Consign to the ashes this note of mine.[246]

My Revered Signor:

Another letter of Francesca.

Driven by the affection which I feel for you, I am forced to contradict what I sent you yesterday evening in that letter when I said I did not wish to tell you to come here. If you did not tell me then, I tell you now that I would wish you to come here this **[xcix]** evening at the same hour as day before yesterday evening. I have indeed thought that towers are not moved by such light blows. But if you do [not?] wish to come here (that there may be no occasion for you to break your promise to some beloved lady or even though it may not be inconvenient), I do not wish to be the cause. Therefore if you wish to come here, pass along as soon as you have read this, etc.

No. 8. Decree of banishment of the lover.[271]

TUESDAY, September 24, 1697.

Giuseppe Maria Caponsacchi,[26] of Arezzo, for complicity in flight and running away of Francesca Comparini, and for carnal knowledge of the same, has been banished for three years to Civita Vecchia.

By the Most Illustrious and Most Reverend Lord Governor of the City in Criminal Cases:

Roman Murder-case.

For Count Guido Franceschini and his Associates, Prisoners.

Summary.

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

[Pamphlet 8.]

Most Illustrious and most Reverend Lord Governor:

The confession of Count Guido and his fellows as to the murder of Francesca, his wife, and of Pietro and Violante Comparini, his father-in-law and mother-in-law, falls far short of supporting the Fisc in demanding the ordinary death penalty. But, rather, it is remarkably in our favor in excluding that penalty. For there is no longer any doubt as to the cause of the murders, namely *causa honoris.* This at first was denied by the Fisc because of the presence of other causes, though these either were insufficient or were indirectly hurtful to the sense of honor. We will go over them hereafter, not " with unwashed hands." For a confession indeed should be received along with all its details, and is not to be divided according to a preconceived purpose. [Citations.]

This cause alone would be ground enough for demanding that he and his fellows be dealt with more mildly, if we bear in mind that *causa honoris* is quite sufficient for the moderating of this penalty. For we have proved in our other argument that a husband may kill his adulterous wife, even after an interval, without incurring the death penalty, wherever the adultery is really proved, as the Advocate of the Fisc concedes in his response. § *Solamque suspicionem.* [Cf. p. cxcvii.]

And in very truth, we have in our other plea adduced a great many decisions of the highest courts, wherefrom it is evident that the penalty has been diminished for husbands who have had their wives killed even by means of an assassin; and, on the contrary, no decision favorable to the Fisc is cited. Such an opinion is therefore to be accepted more readily, inasmuch as it is sanctioned by the greater number of authorities. And even although Farinacci and Raynaldus seem to take the other side, yet Farinacci, in his *Questions,* shows himself very much in doubt, as I have shown in my other plea; and in *cons. 141,* he shows that he is very changeable, since in *cons. 66, No. 5,* he has proved the contrary. Therefore, when his attention was called to this changeableness, in excusing himself, he asserted, in the said *cons. 141,* under *No. 16,* that Beatrice, in behalf of whom he had written [cii] in *cons. 66,* had been beheaded; as if this kind of rigorous sentence should be followed in practice. And may this distinguished authority pardon me,[497] but he responds inconsistently,[517] having forgotten what he had written in the end of *cons. 66:* that is, that Beatrice was put to death not because she, after an interval, had commanded that one be put to death who was plotting against her honor, but because she did not

prove her right to this latter exception, where he says: " So also there was strong hope for the sister Beatrice, if she had proved the excuse she offered, as she did not prove it."

But the Honorable Raynaldus, whose words and writings I venerate, in his *Observationes Criminales, cap. 2, § 4, No. 156,* after he asserts that some remission from the ordinary penalty may be hoped through the benignity of the Prince, does not decide the point by citing Gizzarellus and Giurba, who affirm that in justice the penalty should be decreased. But he goes back to what he had written, *cap. 7 in Rubrica sub No. 60,* where, however, he does not openly examine the point as to murder permitted for honor's sake. Otherwise he would go contrary to the general opinion of authorities, and to many decisions of the highest magistrates, that is to the common practice of the courts. [Citation.] " And this opinion is followed in practice, as I find in the event of such a fact the Neapolitan court has so decided." And concerning this same practice, Matthæus likewise bears witness. [Citation.]

Yet, as I have said, it would be enough to clear Guido of conviction if only his confession be taken in its entirety without subdivision. For greater completeness, however, we offer full proofs of the adultery, as brought out in the prosecution for the flight from home. The Fisc has attempted to attack these proofs lest he might have to lay down his arms; and the Achilles of his pretense is solely a preposterous cross-examination,[110] which was not admitted into the suit for permanent record. It gives the word of a certain baseborn woman, formerly a servant in the home of the Accused, who was severely maltreated by Guido, by the Canon his brother, and by their mother. All too eagerly she narrates the ill-treatment suffered by Pietro and Violante, and by Francesca their daughter, and his wife, respectively, especially in the matter of their food, on account of which Pietro and Violante preferred to return to Rome. [Cf. pp. xlix-liii.]

Yet Guido by a written agreement [93] had bound himself to furnish food to the abovesaid couple. And furthermore it is claimed that the flight of Pompilia also was necessary [ciii], because she was being threatened with death; in order that her own base desire of violating her matrimonial fidelity may not be deduced therefrom.

If, however, we have any regard for the truth, the domestic affairs of the Accused were not so pinched, because they were more than enough, not merely for frugal, but even for lavish living. The theft of the moneys [200] committed by Francesca in the act of flight demonstrates this. (See the prosecution for flight, pages 5, 63, and 92.)

The real and true cause [100] which moved Pietro and his wife to go back to Rome was undoubtedly that the mother of Count Guido could not bear that the aforesaid Comparini should regulate family matters and should at their own pleasure dispose of everything looking toward

the government of the home;[96] this with greatest flagrancy and with none the less boldness they desired to do. Furthermore, Pietro took it ill that he was rebuked for leaving the company of the noble class and associating in taverns [97] with the commonest persons in town, to the scandal of well-born men. And still more because he was compelled by the Governor of the City, under fear of imprisonment, to restore certain trinkets and gems of his daughter,[147] which he had taken away, as Count Guido testified in his examination, pp. 96 and 97. And this is admirably proved by a letter of the same Governor recently presented by ourselves, which we give in Summary, No. 1. [Cf. pp. lxxxi-lxxxii.]

With these statements the cross-examination of the same Francesca, when arrested in her flight, agrees; in it we nowhere read that she was maltreated, nor that she ever complained of that home of decent poverty. And yet it is very probable that, to put a good face upon her flight, she would have alleged the domestic want and home miseries, if she had ever suffered them.

We do not deny that disputes immediately arose between Francesca and her husband, and possibly he threatened her with death. But this was for another reason, namely that she should quit the illicit amours [123] she had begun at the suggestion of her parents, and that she should live with evident chastity, as is to be read expressly in her deposition (our Summary, No. 2, letter A). [Cf. p. lxxxiv.]

It is verified from the fact that Francesca herself, in a letter [112] written to Abate Franceschini, ingenuously confesses (Summary of the Fisc, No. 4, and our Summary, No. 3) that her parents indeed were sowing strife between the couple and were urging her to have recourse to the Bishop [139] under the false pretense of ill-treatment; and day and night they kept instigating her to poison her husband, her brother, and mother-in-law, to burn the house [civ], and what is still more awful, to win a lover and return to Rome in his company. Nor did she fail to obey them in several of these matters.

And in another letter written to the same Abate, and shown by us, and given in our Summary, No. 4, we read: "Not now having those here who urge me to evil." [Cf. p. lxxxvii.]

Of no counter-effect is the response [459 465] that the single characters of the said first letter had been previously marked out by Guido, and were afterward traced with a pen by herself,[114] as she asserts in our Summary, No. 2, letter K. [Cf. p. lxxxvi.] For proof of this statement she can bring no other evidence than that she does not know how to write.[235] Summary, No. 2, letters B, H, and K. [Cf. pp. lxxxiv-lxxxvi.]

In this, furthermore, she stands most clearly convicted of falsehood by her signature, which was recognized by herself at the command of the court while she was in prison, as we find in the prosecution for flight, p. 39. She also stands convicted of falsehood by the signature

of her marriage agreement, concerning the truth of which it would be ill to doubt, both because there is along with it the signature of one of the Lord Cardinals,[50] and because her handwriting was recognized by herself who had written it, at the demand of the notary, as is to be seen in the copy filed in the prosecution for flight, p. 132. And furthermore she is convicted by the priest with whom she fled, who asserts that more than once at night he has received letters which were either thrown out of the window by her or were sent by a servant; we give his deposition in our Summary No. 5, letters A, B, C, and D. [Cf. pp. lxxxviii-lxxxix.] This is verified by the Fiscal witness, p. 108, where we read: "And she threw down a note, as I saw very clearly, and the Canon picked it up, and went away." There are, besides, the letters [232] and sheets of paper filled with mutual love, found in the prison [231] at Castelnuovo, where they themselves were overtaken. But it is utterly impossible that the characters of these were also marked by her husband, nor is it told by whom they were written; accordingly it is to be presumed that they were devised by herself, lest she might betray their forbidden love-intrigues, which they would have to hide with the greatest care. And I pray that the abovesaid letter be submitted to our eyes, and it will be clearly seen whether the characters were formed by one not knowing how to write, but forming them in ink in imitation of certain signs, or rather by the expert hand of the woman herself.

In the first place, the truth of the said letter of which we are speaking, we may gather from the letter of the Governor of Arezzo, in our Summary, No. 1 [cf. pp. lxxxi-lxxxii], where we find: "Of much greater scandal were the flights and petitions made by the said wife, their daughter **[cv]**, to Monsignor the Bishop. These were made for no other reason than that neither she nor her parents wished to stay any longer in Arezzo, but desired to return to Rome. When she had been rebuked by that most prudent Prelate, he always sent her home in his carriage."

And this is likewise expressly deducible from another letter [143] of the most reverend Bishop, which is given in the Summary, No. 6 [cf. p. xci], where we read: "The more she made outcry, that much the more she had been urged thereto by the instigation of her mother." And after a few words: "I have some knowledge of this, because Senator Marzi-Medici, who presides over the secular government of this city for our Most Serene Grand Duke, has told me all."

It is verified still further by another letter of Signor Bartholomeo Albergotti, produced by the other side, which is given in the Summary of that side, No. 2, at the end. [Cf. p. liv.] But the letter is not given in its entirety, for, where it speaks of the Secretary of the Bishop urging Count Guido and his mother, we should read there: "Not to maltreat the Signora for the affront offered him. After disputes enough

of this kind, he took the Signora back home. And she declared that she was absolutely unwilling to live with Signora Beatrice and with the Canon Girolamo, her brother-in-law." And after a few other matters: " I pray yourself and Signora Violante to be willing to offer a remedy by instilling the wife with a tranquil peace, which will be for the quiet of all," as we read in page 190.

This is also proved by the letter of the Abate produced on the other side, p. 182, where we read: " By Signor Guido, my brother, several offers have been made to him, but have not been accepted; and they insist that we force our mother and the Signor Canon to leave the house. But this shall never be, even if there do not follow both love and concord. I will never advise that."

And from the letter of D. Romano, 188, later, where we read [cf. p. liv]: " I have known why she fled to Monsignor, and it was because she did not wish to live with the Canon and Beatrice," etc., which words are not noted in the Summary of the Fisc, No. 2.

See for yourselves, therefore, that Francesca was not maltreated, although she so deserved because of her eager and indecent recourse [139] without cause to the most reverend Bishop. Hence it is evident whether the Comparini left Arezzo and Francesca fled from home because of ill-treatment.

It remains now that we see—even granting this ill-treatment—what cause of fleeing from the home of her [cvi] husband Francesca might have, or rather if her flight were not scandalous. This will not be difficult to make clear, if we will dwell for a little while upon the deposition of the same Francesca and upon the letters [232] found in the said prison of Castelnuovo. These latter were produced by the Fisc in the prosecution for flight, though they were not given recognition. The lack of this acceptance can not stand in our way, nor do I think it can be denied that they are of the same handwriting, if they are compared with the assured writing of the command of the court. Furthermore, as they contain love affairs, and the name of Guido himself, no sensible person will think that they were not written by them.

From her own deposition, it is evident that she was often abused for her sterility, and was terrified by threats of death on account of her love affairs with the said priest, as we see in the said Summary, No. 2, letter A. [Cf. p. lxxxiv.] Nor was the cautious husband deceived, since her love increased day by day, while her conjugal affection indeed decreased just as her feeling for her lover increased. In the said letters which are given in Summary, No. 7 [cf. pp. xcii-xcix], that priest is called: Beloved, Adored, Mirtillus, My Soul, Most Dearly Beloved, Narcissus, My Eagerly Craved Blessing, Dearest Idol; and she signs herself " Thy faithful Sweetheart," and " Amarillis." And conversely, she is called by her lover " My Adored Signora." And in the details of those letters

is expressed her intense love and the ardor with which that unfortunate one was burning for her lover, as is evident. Nor may I without shame refer to the very tender expressions of her love. But one of them, and possibly a second, I may not omit, that " from the claw, you may recognize the lion." Thus in letter 17, we read: " So that you can not say that I no longer love you; because all my good wishes for Signor Guido are turning toward you, who deserve it." And this possibly is the reason why she refused to lie with her husband, as the said letter of Signor Albergotti points out, where he says [cf. p. liv]: " The Signora has been melancholy, and two evenings after your departure she made a big disturbance, because she did not wish to go and sleep [115] with Signor Guido, her husband, which displeases me very much."

In the first letter [we read]: " My affection no longer has any rein "; in the fourth: " I am ready to do what I have told you "; in the tenth: " I will suffer quietly the pains which are pleasing to you." And it would be a long task and a disgusting one, to tell them over singly. For she was unwilling to conform herself to the chaste manners of Arezzo, accustomed as she was to living a freer life. This may be read in the letter of Abate Franceschini produced by the other side, page 179, and following, where we read:

" These occasions for bitterness, which have arisen between yourselves and Signor Guido, I do not wish to examine. I know enough to say **[cvii]** that this has arisen from your wishing to turn the wife from what, according to the custom of the country, her husband both may and ought to do. Because over the wife God has given him authority, and likewise it is the general usage and the custom of the country. If yourself and Signor Pietro should stand in the way of this, you would do wrong, and it would be the duty of the husband to admonish his wife." And in another letter, p. 124, we read: " I can not persuade myself that my mother and brothers would conduct themselves in such a way as to force her to have such recourse." And after a few words we read: " And know well that what I have endeavored by my words to urge upon Signora Francesca, Signor Pietro, and yourself is only out of pure zeal for the honor of your house and of yourselves."

On the other hand, the same thing is to be drawn from the letter of the said priest, as we read in letter 20; " I have received your notes, full of those expressions [of love], etc. Be pleased to receive me into your bosom, in which I rest all my affections." And the letters which have reference to the flight, give clear proof of the mutual exchange of affection, as is well proved by the effect that followed. Thus, in letter 18, we read: " I wish to know whether you can leave Sunday evening, that is to-morrow evening; for if you do not go away to-morrow evening, God knows when you will go, because of the scarcity of carriages." And after a few intervening words: " As soon as you

see that they are sound asleep, open the door for me, so that I may help you make up your bundles and collect the money." And after a few more words: " Praying God that he will make this design of ours turn out well."

And letter 19 of the same lover, in which proofs of love are given by no means obscurely, also shows us of what quality those loves were, where we read: " That the Jealous One seems pacified, and that he has said you were at the window, is a very bad sign; because he will wish to find out in that way what you do at the window,[173] and for what purpose you are there. For [Conti] has told me that now he is more jealous than at first, and that if he finds out anything he will wish to avenge himself by putting you to death and will wish to find means to do the same to me."

It is proved still further that the wretched Accused complained bitterly that she was not content merely with a single lover at Arezzo, but that she has been defiled by many suitors,[123] so that she multiplied the disgraces to his house, page 98, and following. We also read clearly in the seventh letter:

" I met Signor Doctor, as usual. He asked me where I was going, and along the street he asked me why I had written scornfully to him. I told him that he deserved even worse, because he had given evil deeds and good words; for he had said he was fond of me, that he wished him and the rest of them ' in Sovara.' "

And in the thirteenth **[cviii]**:

" As to the Doctor, you offend me by saying that I will love him again. I tell you, as sure as the Sun shall rise, I have not the heart for another such blow."

It is therefore quite evident whether Francesca had an honest cause for leaving the home of her husband, or whether she was not rather impelled by the more urgent spurs of love. It may be said now that these letters were sent for a good purpose,[247] that the priest might be induced to accompany her so that she might shun the danger of death, since she found herself therein without any just cause. And it may be said that she could have kept her modesty uninjured in the company of her lover. But since without doubt the amorous expressions used in the letters do not show chastity of mind and a modest disposition, and as just cause for flight is lacking, the veil wherewith her viciousness tried to hide itself is destroyed. I acknowledge that Judith,[426] who was an entirely chaste widow, of decorous appearance and fine looking in many ways, made advances toward a very licentious enemy; but this was for the purpose of accomplishing a pious work, namely, to liberate her own native land. She was provided not with lascivious letters, but with earnest words, the unimpaired modesty of which it were evil to doubt, since she was moved by the breath of the Holy Spirit. But to-day,

how very few Judiths are found; yet the daughters of Lot are multiplied, who when they could not preserve their sense of shame even in their father's company made him drunken with wine, lest he, when sober, would deny them because they were sinning weakly, so that, when out of his own mind, he was involuntarily polluted with nefarious incest. (Genesis, chapter 29.) Do we believe that a girl who was dying for love, and who burned most ardently for the company of the loving Cupid and her lover, would keep safe her modesty during a long journey? Which modesty I only wish she had preserved in the home of her husband!

And even if Guido had imposed upon her, without due reason, a just fear of death, she should not therefore have increased his suspicion of base and lustful acquaintanceship by choosing as her companion in flight that priest whom her husband had suspected; for Caponsacchi was not at all related to herself or her husband, as each of them confesses in our Summary, No. 2, letter G [cf. p. lxxxv] and No. 5, letter E. [Cf. p. lxxxix.] Thus she would prove her dishonor. But while still guarding carefully her matronly shame, she might either have entered some monastery with the help of some church official, if she had used truth and not falsehoods; or she might have had recourse to the civil governor, who, after examining all things, would have afforded her a safe return to the City in company with honest men and women; or he might have placed her in the home of some honest matron **[cix]**, with due safeguards. But even if she had no faith in either of these, and was determined to go back to Rome, she might at least have entered upon the journey with one of the servants.[148]

Likewise, the other excuse for putting an honest face on the illicit amour falls to the ground—namely that concerning the aforesaid flight another priest,[145] the brother-in-law of the sister-in-law [85] of the said Francesca, was informed. For if the abovesaid letters are read through carefully, the suspicion of illicit correspondence with his connivance is very greatly increased. We read in letter 11:

" You tell me that [Conti] is unwilling to bring letters for you. But let me inform you that I am wheedling him; and I have the wits to bring it about that he will carry them for you. Because I say two kind words to him, and he is charmed and will do what I wish."

And in letter 19 of the lover:

" For he has told me that now he is more jealous than at first, and that if he finds out about anything, he will wish to avenge himself."

But who would judge that we can deduce from the said words that their mutual love was chaste, because another priest was aware of it. I know that for Francesca to show herself at the window at the hiss [173] of her lover in company with the other priest does not savor well. Of this a witness [54] for the Fisc, in the prosecution for flight, gives oath,

pp. 107-8. Therefore, not without cause did Count Guido have suspicion also of the other priest, as Francesca herself asserted in her deposition in our Summary, No. 2, before letter A. [Cf. p. lxxxiii.]

These [two] things are taken as proved therefore: [first] that it is not established that Francesca was threatened with death without just and legitimate cause, and [second] that a most suspicious correspondence with her lover is established. It will follow that the threats were offered by her husband to preserve his honor, and so it was in the power of Francesca to free herself from these threats without scandal, without flight, and without shame, by living chastely. She, however, was too prone to the tickling of the flesh, and had deferred all things to the fulfilling of her vicious desire, without respect to her violation of conjugal faith. It is all too foolish to doubt her utter recklessness, since it is manifestly evident from matters brought forward in the prosecution for flight, and especially from the reciprocal love between the lovers, etc. It is also clear from the letters containing such very tender expressions. [Citations.]

As to the entry and egress [170] of the said priest from the home of Francesca [cx] at a suspicious time, a witness [54] [171] for the prosecution testifies, p. 107: "At the sound of the Ave Maria, while I was at the same window, I saw the door of the said Signori Franceschini open very softly, and from it passed the said Signor, etc. He pulled the door to as he went out, but did not in fact close it, and therefrom, after a little while, I saw the said Signora Francesca Pompilia, with a light in her hand, who closed the said door." It is also proved from letter 11, where we read: "For that reason I do not have you come here, because now the street-door is no longer opened, but you might be able to open the back-door," etc. This of itself is enough to prove adultery, even when trial is being made to demand punishment therefor. [Citations.]

Her leaning from the window at a hiss,[173] day and night, and their mutual nods, concerning which a witness [54] testifies, p. 108, are quite enough to prove carnal communication. [Citations.]

Then there is the manner in which they prepared for the flight, which includes, as I may say, a show of treachery, as is to be understood from the letter of the priest, No. 18, where [we read]: "Above all, try to put some into all their cups, but do not yourself drink it." For in seeking an opportunity to mingle an opiate [196] for them,[241] he was inquiring what colored wine they were drinking in the home, lest, as I suppose, the color of it when altered by the drug mixed therewith might betray their plots. So in letter 4, where we read: "Then further, if they continue to drink the red wine I will tell you so." In No. 12: "When you tell me that it is not possible to make my mother sleep, while she is ill, and drinks no wine." And in letter 13: "As to what you wish

to know about the wine, I tell you that it is red now, but I do not know how much longer it will be so; but I will let you know about it."

Still further this most wretched wife was moved with a burning ardor for the said priest, as is noted in letters 5 and 21; this is usually conceived by lovers only. Therefore, since it is undeniable that the carnal love [150] was reciprocal between them, I think it can not be doubted that her departure from the home of her husband and their association through a long journey prove their adultery. [Citations.]

In the progress of the journey kisses were given on both sides;[206] of this the witness [205] for the prosecution testifies; but I do not find in the evidence that he saw these at night [cxi], as is supposed by the other side; for page 100 asserts "I only saw that at times they kissed each other." And these kisses Francesca so strongly desired to give and to receive likewise, that in letter 11 [we read]: "I thank you for the kisses you send me; but if yourself could give them to me, I would hold them dear. I give you as many million more." And in letter 10: "And giving you an amorous kiss." And in 5: "I say good bye with a million kisses." And here and there in the other letters. These render the adultery not at all doubtful, so much so that there are not wanting authorities who assert that when the kiss is proved the adultery may be said to be proved. [Citations.]

Therefore, unless I am very much mistaken, no one who knew what we have recounted could be found so senseless and so weak-minded as not to believe strongly that when they were found in the inn her matronly shame had been tampered with, either during the journey or at night while they were taking their rest, or more probably in the morning while they were enjoying each other's society.

But passing over the fact that the priest was clothed in laic garb,[217] pp. 4 and 100, which affords no small weight for the proof of the adultery, all further doubts are removed, since they arrived together at the tavern of Castelnuovo at half-past seven at night,[211] as three witnesses for the prosecution agree in swearing, pp. 44, 47, 49. And although two beds were in the chamber, only one indeed did the said priest wish to have made ready, and all night long,[215] behind closed doors, he rested alone with her (if lovers can rest); from this the adultery is proved without doubt. [Citations.]

This proof indeed becomes all the stronger from the lie of Francesca, who asserts that they arrived at the said tavern at dawn,[212] Summary, No. 2, letters F and L. [Cf. pp. lxxxv, lxxxvi.] For if no evil had been done she would not have attempted to hide the truth. [Citation.]

Finally the sentence or decree of this Tribunal,[271] which is given in Summary, No. 8 [cf. p. xcix], where the said priest is condemned for carnal knowledge of Francesca, removes all doubt; because the adultery is thereby rendered infamous, as was proved in our other argument.

And though it is asserted that it was in the minds of the Lords Judges [cxii] to modify this sentence and to add "for pretended carnal knowledge," yet it never was thus modified. And yet such modification would not have stood in the way after it had reached the ears of the luckless husband that the adultery of his wife had been made manifest and notorious and had been confirmed by the Judges' decree.

But certainly, even if we are cut off from this proof, their carnal communication remains more than sufficiently proved for our purpose; for we are arguing not for the infliction of the penalty of adultery, but we have deduced the adultery for exclusion of a penalty. [Citations.] For it is quite customary that, for a civil purpose, such as divorce or loss of dowry, adultery is abundantly proved by circumstantial evidence. [Citations.]

Nor is it of consequence that some of the stronger proofs are proved by single witnesses; for we are arguing to establish dishonesty and adultery in kind; not for the purpose of condemning the adulteress, but for the defense of the accused.

And the reason is very evident, because to excuse a husband from the murder of his adulterous wife after an interval, an exact proof of the adultery is not required, but strong suspicion of adultery is quite abundant, as Sanfelicius testifies it was decided, *dec. 337, num. 13.* But we are upon firmer grounds, because we not only have strong suspicions drawn from single witnesses, but other finely proved grounds, yes, the clearest of proofs, deduced by the Prosecution.

Very little does it stand in the way of this proof of her guilt that Francesca, when near to death,[362] tried to exculpate herself and her lover by asserting that there had been no sin between them;[355] for this kind of exculpation, which is all too much a matter of pretense, might help her companion [360] just as theretofore she had brought blame upon him; and by no other proof might his inculpation have been removed. This would indeed aid her fellow, but not herself. But since she stands convicted by the abovesaid proofs of having broken her matrimonial faith, it would be absurd that an exculpation [cxiii] made that she might seem to die an honest woman, should be of such efficiency as to destroy the proofs of her baseness. [Citations.] And what is more horrible, that from the said exculpation, her murderer might be the more severely punished.[361]

I have faith, and this helps me to hope, that her soul rests in eternal safety, by divine aid, since she had time to hate her previous life. But no man of sense could praise her testamentary disposition, in which she appointed as her sole heir her son, who, as I hear, was but just born and hence innocent, and who had been hidden [309] away from his father, and which appointed as residuary legatee a stranger joined by no bond of relationship.

From these considerations, therefore, it is plain that the adultery of Francesca is fully proved. Hence according to the opinion of the Fisc, her murder, even if committed after an interval, is not to be expiated by the death penalty; not only because of the justly conceived grievance, but because the injury to the honor always keeps its strength, according to the sentiment of Virgil in the Æneid, Book I: " Keeping an eternal wound within the breast."

It is of no force in response to this that he did not kill his wife and the adulterer, whom he had overtaken at the inn of Castelnuovo, but that he merely saw to their imprisonment;[222] as if that, after his recourse to the judge, he could not with his own hand avenge his honor.

For we deny in the face of all heaven that he could have killed either of them, because he was worn out by the rapid journey, and was so perturbed by the agitation of his mind, that he was seized by a fever. And furthermore he had heard that the said priest was armed [221] with firearms,[470] as he asserted in the prosecution for flight, at a time when his word can not be suspected, because the murders had not yet been committed, pp. 76 and 77. It is also true that the priest was a terrible fellow,[29] according to the witness for the prosecution, p. 167, and as Francesca herself confesses. Elsewhere, the Accused speaks of the taking away of an arquebus [416] pointed at the officers, as he himself asserts, p. 71. And furthermore, Caponsacchi was all too prompt and too much disposed to resisting, as we read in letter 18. There, in speaking of the opiate to be given to the domestics, he adds: " If by ill luck, they shall find it out and shall threaten you with death, open the door, that I may die with you, or free you from their hands." And the wife, indeed [cxiv], was unterrified, full of threatening, angered, and even furious, as the outcome proved; since when captured by the posse of the Ecclesiastical Court, she dared, in the very presence of the officers and other witnesses, to rush upon her husband with drawn sword.[227] And she would easily have killed him, if she had not been hindered, p. 50. He, indeed, weak, as he is, and of insufficient strength, could not have taken vengeance by killing both, or either of them, provided [472] as he was with only a traveler's sword.[204] Hence, as he was not able to kill them, he saw to their imprisonment in the confusion of his mind, in order that he might prevent the continuation of his disgrace, and thus might hinder their future adultery.

But, indeed, even if he could have killed them, and did not do so, he would be praiseworthy; for up to that time the adultery had not been made notorious by the sentence of the judge, and only strong suspicions of it were urging him on.

But as for the recourse to the judge, whereby it can be claimed that he renounced the right to kill his adulterous wife, which we deny, I pray you note that the Tribunal acted prudently in placing Francesca in the

Monastery,[276] that she might be kept more decently than in a prison. Then when it received the attestation of the physician as to her condition,[283] lest she might be kept there destitute of necessary aids, and so might undergo punishment in the very course of events (which is everywhere avoided), after obtaining the consent of Abate Franceschini,[288] brother of the Accused, the court permitted her to be placed in the home of her parents with the warning to keep that home as a prison.[284]

But I can not commend any one, whoever he may be, who tried to get Francesca from the Monastery under the false pretense of ill health, since he could legitimately and with more decency have succeeded in his intent by laying bare the truth, namely her pregnancy.[283] But this was done for no other reasons than these: either that the son might be hidden away [309] from Count Guido, since the law presumes that he was born of his legitimate father, although his wife had shown herself incontinent; or else Francesca, believing that the child was conceived of some one else, possibly was trying to hide from her husband the fact of her pregnancy.

And now in the meantime, let it please my Most Illustrious Lord to turn his eyes toward Arezzo and for a little while to think of Count Guido stained with infamy, when the decree of condemnation for adultery reached his ears. The adulteress was still unpunished, and he was ignorant of the fact that she could not be punished, owing to her supposed ill health, and that during her pregnancy, which she had so carefully hidden from him, she was unsuited to the vengeance of the sword. Furthermore, when he saw that [cxv] Francesca had gone back to that very suspicious home of Pietro and Violante, who had instilled Francesca with dishonesty, had repudiated her, and had professed that she was the daughter of a harlot,[105] he lost all patience, as is evident from the deposition of Blasius, p. 318, where we read: "But still further, she had been received back into the home, after she ran away from Guido, although the latter had put her in a Monastery." This change drove to desperation [306] her luckless husband, who was at least an honorable man. Therefore his recourse to the judge ought not to increase the penalty for him.

We do not deny that Abate Franceschini had given consent [288] to the removal of Francesca to the home of Pietro and Violante (in order that we may yield to our respect for my Lord Advocate of the Fisc), but only on verbal representation, for I have not been able to see it in writing. But, for our proposition, this does not affect Count Guido, since it is not made clear that he was informed of such consent, and thus far the Fisc merely presumes that he had been informed by Abate Franceschini, his brother, of this consent. [Citation.]

We are compelled to affirm that this knowledge is not to be presumed, as is shown below, or at the very worst there is present only presumptive

knowledge. And I do not think that on this kind of merely presumptive knowledge the death penalty can be demanded, nor can Count Guido be condemned, since he has neither confessed nor been convicted of such knowledge: chapter *nos in quemquam,* where we read: "We can not inflict sentence upon any one unless he is either convicted or has confessed of his own accord."

Indeed, what if Count Guido had acknowledged that he had written the consent furnished by the Abate, his brother, since it had no special authorization for that particular matter; nor a general authorization to conduct litigation, but only to receive moneys taken from himself by Francesca, as is to be seen, p. 136. By exceeding the limit of his power, Abate Paolo would have exasperated the mind of Guido; for the luckless man was already burning so with rage at the temerity of Francesca, Pietro, and Violante, that he was almost driven, I might say, to taking vengeance. He had put this off as long as he had any hope that he might have the marriage annulled because of mistake concerning the person married. For he was ignorant of the point of Canon Law that error as to the nature of the person contracted does not render a marriage null, but only an error as to the individual.[298] [Citation.]

Nor does it amount to anything that Francesca, at the time she was killed, was under surety to keep the home as a prison, as if she were resting in the custody of the Prince.[419] For, however that may be, even if **[cxvi]** the Accused had killed Francesca to the offense of the Prince, yet since he wished to recover his honor and to remove with her blood the unjust stains upon his reputation, for this particular reason the aforesaid custody is not to be given attention, nor does it increase the crime; as in the more extreme case of one injuring a person having safe-conduct from the Prince, Farinacci affirms in making a distinction [Citation] where knowledge thereof is not to be presumed.

Furthermore, when we speak of custody we should understand it to apply to public custody and not to a private home as was proved in our other argument. Nor is the response enough that this would hold good in the one under custody, but not concerning the custodian, Violante; for I do not know any probable distinction between the two, since both cases may suffice for escaping the penalty; nor is any stronger reason to be found for the one than for the other. And indeed a third case would be more worthy of excuse, of one who broke this kind of custody, when knowledge thereof was not proved. Because such an offense might arise under such custody, just as one who had killed a person under bann, but ignorant of that bann, excused himself. [Citations.]

If therefore Count Guido is not to be punished for murder of his wife, for the same reason he can not be punished for the murder of Pietro and Violante,[401] because these murders were committed for the same cause, *causa honoris.* For at their instigation, Francesca found

her lover, and still more, in order that they might disgrace Guido, they did not blush to declare that Francesca had been conceived illegitimately, and had been born of a harlot.[105] This greatly blackens the honor of an entire house, as Gratian observes [Citation]; for the daughters of such are usually like their mothers.[106] Then also, as I have said above, the Accused burned with anger when he had notice of the return of Francesca to their home, p. 318, and the following. And Alexander proves this in his confession where he says, p. 646: "So that he had to kill his wife, his mother-in-law, and his father-in-law: because the said mother-in-law and father-in-law had a hand in making their daughter do evil, and had acted as ruffians to him." This following fact makes it all the clearer, because on the fatal evening when they were slain, at the knock on the door,[321] and as soon as Violante heard the much beloved name of the lover, straightway she opened it.[323] And thus she showed, unless I am mistaken, what removes all doubt that Pietro and Violante were not at all offended with the love affairs of their daughter and her lover.

It is all one, because we are compelled to acknowledge either [first] that the Comparini had done new injury to his honor by receiving **[cxvii]** her into their home after they had declared that she was not their daughter, and after her adultery was clearly manifest, and hence there should be departure from the ordinary penalty. [Citation.] For just indignation, when once conceived, always oppresses the heart and urges one to take vengeance. [Citation.]

Or else [secondly] we must acknowledge a cause of just anger continued, and indeed was increased, which is quite enough foundation for asserting that the murders were committed incontinently. [Citations.]

Since, then, from the confession of Count Guido as well as from that of his associates, and since from so very many proofs brought forward in the trial it is evident that Guido was moved to kill them by his sense of injured honor, in vain does the Fisc pretend that for some other remote reason he committed the crimes. For, to tell the truth, I find no other cause which does not touch and wound the honor, if we only bear in mind what Guido has said in the trial, pp. 96 and 97: namely, that the Comparini had arranged the flight of Francesca and had plotted against his life. This alone would be enough to free him from the ordinary penalty. Bertazzolus and Grammaticus [Citation] testify that a man was punished more mildly who had had one who threatened him killed, though the threats were not clearly proved. [Citations.] "And the death which he had threatened fell upon himself, and what he planned he incurred," and also: "There is no doubt that one who had gone with the intention of inflicting death seems to have been slain justly."

Another cause of the murder alleged by the Fisc is the lawsuit [421] brought to annul the promise of dowry.[260] Upon this point a complete and a very skilful examination was made by the other side, and because of this it was pretended that he had incurred the penalties of the Alexandrian Constitution and of the Banns.[421] But this pretense in fact soon vanishes. For if we look into it well we shall find, without difficulty, that a cause of this kind [cxviii] is no less offensive to the sense of honor. For the ground on which Pietro had attempted to free himself from the obligation to furnish the promised dowry was this solely: that Francesca was not his own daughter, but the child of an unknown father and of a harlot.[105] Every man, however, well knows whether this kind of a declaration would wound the reputation of a nobleman.

Whether or not a pretense of this kind could have found a place for itself before we had the confessions of Count Guido and his companions, as I have said above (for then the Fisc might have been in doubt how Guido could be moved to kill her), yet thereafter it was clear from the confessions of them all that the sense of injured honor had given him the impulse, and had even compelled him to the killing, as Count Guido asserts, p. 678, where we read: "To inflict wounds upon them, inasmuch as they had injured my honor, which is the chief thing." Vain is it to inquire whether he had killed them for some other reason, because, as it was clearly for honor's sake, the Fisc never could prove that they were killed on account of the lawsuit, and not on account of honor, as is required for the incurring of the penalty of the aforesaid Bull. [Citation.]

These statements are apt also as regards the murder of Francesca, who had sought a divorce.[266] For if she had made pretense of being separated from him for any other reason, and if her dishonor were not perfectly clear, then indeed there might be room for the Alexandrian Constitution. But since wounded honor gave occasion for the murder, we are far beyond the conditions of the Alexandrian Constitution. Otherwise a very fine way would be found for wives to act the prostitute with impunity. For if it were possible, after adultery was admitted, to bring suit for divorce, they would find a safe refuge to escape the hands of justly angered husbands, and would be rendered safe by the protection of the said Bull even though the divorce was not obtained and though the husbands had been offended because of their dishonor.

But still less can such capital punishment be inflicted upon Guido on the pretext that he assembled armed men, contrary to the rule of the Apostolic Constitutions and Banns.[409] For whenever the question is whether a husband may assemble men to kill his adulterous wife, we are still beyond the conditions of the Constitutions; for they have place whenever men are assembled for an indeterminate crime, and crime does

not follow; then indeed [cxix] the provisions of the Bull are applicable. But whenever men are joined together to commit crimes, and these actually follow,[411] attention is directed to the end for which the men had been assembled, and the punishment for that is pronounced, nor is there any further inquiry concerning the beginning (that is, the assembling), as I have proved in my other argument. And I now add another citation [Citations] where, after the question was disputed, he asserts: " But certainly, notwithstanding what has been said above, in the current case, I do not believe there should be any departure from the decision of so many men, whom we may well believe have considered and written the entire matter with maturity and prudence for Our Most Sacred Lord Clement VIII." And at the end of this addition, it is testified that the Apostolic Chamber had so decided it at the order of the said Pope. [Citation.]

This is also proved by the Banns of my Most Illustrious Lord Governor, chapter 82, where they impose a penalty for assembling men for an evil end, if the evil end may not have followed. But they decide nothing when the crime for which the men had been assembled had been put into execution, because in this case the penalties for assembling cease and only the penalty for the crime committed is inflicted, as was said above.

And that the assembling of men for the purpose of recovering one's reputation does not fall under the penalties of the Apostolic Constitutions, see *Farinaccius cons. 65, No. 66.*

Finally the matter of carrying prohibited arms [413] is still left for consideration. Even if some authorities have asserted that this is not to be confounded with the principal crime, yet the contrary opinion is held by the majority; for the purpose is to be considered, which the delinquent chiefly had in mind. So Bartolo holds in our very circumstances. [Citations.] [cxx] And on the point that one killing for honor's sake, with prohibited arms, is still to be punished more mildly, Matthæus testifies that it has been so judged. [Citation.]

This also holds good in the more extreme case of several crimes, which can easily be committed separately and which tend toward different ends; yet, if they are committed at the same time and for the same end, the punishment only for the crime which was chiefly in mind is imposed. Thus, if one wishing to commit theft climb over the walls of the city,[412] though he could commit that deed without the crime of crossing the wall (which is a very grave crime, according to Farinaccius, *quaest. 20, No. 146*), even then only a single penalty, namely that for theft, is inflicted, as the one chiefly in mind; and this is a little harsher than that for crossing the walls of the city, but is not of utmost severity. [Citations.]

Nor does it escape my notice that the Banns of our Most Illustrious Lord Governor, chapter 8, seem to settle the question by deciding that the punishment for carrying arms ought not to be confounded with punishment for the crime committed therewith. Nor do I fail to see, still further, that these Banns do not include one of the companions, who was a foreigner and not of that district. But since by common law these Banns receive a passive interpretation whenever arms are not borne for an ill end and then some crime is committed with them (because the delinquent did not have in mind the crime which he committed), he is punished for both crimes because at divers times he committed different crimes. But when any one bears prohibited arms with the purpose of murder, and then commits the murder, the chief crime of homicide, in view of which he bore the arms, is considered and the penalty of murder is inflicted, but not that for carrying the arms. [Citations.]

I beg you note that this crime in question is made important from the fact that those three who had no fear of ill, but who ought by all means to have feared, were slain, and not because of the kind of arms with which they were slain. The number of the victims, and not the instrument of their death excited astonishment, and it would have been the very same if they had been slain with the longest of [cxxi] swords, or with sticks, or with stones.[415] Therefore it would indeed be a very hard matter that the Fisc should be aflame over these murders, and not being able to demand the death penalty for them, should demand it for the carrying of arms.

But beside this, Count Guido denies expressly that he owned, carried, or kept arms of unlawful measure. And although it is asserted by the four associates that at the time of the murders Guido had in his hands a short knife,[414] and had given the same kind of arms to his companions, yet these could not doom him to the ordinary penalty. Thus Farinacci and others affirm after this matter has been well discussed and the contrary opinion confuted. [Citations.]

Nor does he deny that he had on his person a dagger [414] which was entirely lawful. But he did not have it with him at the murder, nor did he carry it for the murder, but only to defend himself if he should find in the aforesaid home outsiders ready to use force against him. And that was permissible to him; for there is ample right to bear arms of this kind throughout the Ecclesiastical State, and (I may boldly add) even in the very City. Because no mention is made of the City, although some places are excepted; according to that very true axiom: "The exception proves the rule in what is not excepted." [Citations.]

And he could the more readily believe that it was permissible for him to do so, because he had enemies in the city who threatened him there

and made plots against him, as Guido himself says; and therefore the bearing of arms of this kind was more necessary here than elsewhere.

Nor is it to the point that, because it is claimed he had killed with forethought, the privilege of bearing this kind of arms should not be granted him. For aside from what is said above and in the other argument establishing the fact that the aforesaid crimes were " for honor's sake," they can not be said to be committed " after an interval." The objection might hold good if he had used the arms in the murder, but as this is not established, it does not seem possible to deny him the right to carry the arms. In any case, although strictly speaking he could be said to have done the killing when armed with the said arms, yet he should not be punished with the extreme penalty of death. In *Caballus case 90, No. 7*: " Yet in fact in these cases I have never seen the death penalty follow, but by grace it is commuted to a milder penalty."

[cxxii] Finally he can not be said to have incurred the penalty for prohibited arms from the fact that he was present at the murders committed by his associates with such arms; because the penalty of this kind which is due to one furnishing the said arms does not extend to the helpers and assistants. [Citation.]

I do not speak of Domenico and Francesco, because these last two, as foreigners,[423] are not bound by our Banns. But all matters fight for all of them and every single ground for the diminution of the punishment, which favors Count Guido, also favors them all; since accessories are not to be judged on different grounds from the principal, as I have shown in my other argument. There I cited, not the authority of one or another doctor singly, but the decisions of the highest magistrates. Clar also testifies that this opinion has been observed in actual practice. § *Homicidium, sub No. 51.*

But I earnestly beg [513] that my Most Illustrious Lord will be pleased to consider with kindly countenance and untroubled vision that Count Guido did the killing that his honor, which had been buried in infamy, might rise again. He killed his wife, who had been his shame, and her parents, who had set aside all truthfulness and had repudiated their daughter. Nor had they blushed to declare that she was born of a harlot, in order that he might be disgraced. They also perverted her mind, and not merely solicited, but even by the strength of her filial obligation compelled her to illicit amours. He killed her lest he might live longer in disgrace, loathed by his relatives, pointed out by the noble, abandoned by his friends, and laughed at by all. He killed her, indeed, in that City which in olden days had seen a noble matron wash away the stains of shame with her own blood—stains which against her will the son of a king had imposed upon her. And thus she expiated the violent fault of another by her own death. (See Valerius Maximus and Titus Livius.) This city also saw a father go entirely unpunished, and

even receive praise, who had stained his hands with the murder of his daughter, lest she might be dragged away to shame. [Citations.] So much did the fear of losing his honor weigh upon his heart, that he preferred to be deprived of his daughter rather than that she should continue to live in dishonor, even against her own wish. Count Guido did the killing in their own home, that the adulteress and her parents, who were aware of her crime, might find out that no place nor refuge whatsoever was safe from and impenetrable by one whose honor had been wounded. He killed them lest deeds of shame might be continued there, and that the home which had been witness of these disgraces might also be witness of their punishment. He killed them because [cxxiii] in no other way could his reputation, which had been so enormously wounded, find healing. He killed them that he might afford wives an example that the sacred laws of marriage should be religiously kept. He killed them, finally, that either he might live honorably among men, or at least might fall the pitied victim of his own offended honor.

H. Arcangeli, *Procurator of the Poor.*

[cxxiv] [File-title of Pamphlet 8.]

By the Most Illustrious and Most Reverend Lord Governor of the City in Criminal Cases:

Roman Murder-case.

For Count Guido Franceschini and his Associates, Prisoners, against the Fisc.

New Memorial of the fact and law, together with a summary, by the Honorable Procurator of the Poor.

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

[cxxv] Romana Homicidiorum.

[Pamphlet 9.]

Most Illustrious and Most Reverend Lord:

The confessions of Count Guido Franceschini, and of Domenico Gambassini, Francesco Pasquini and Alessandro Baldeschi, his companions, are null; and therefore they should be given no consideration, as they issued under fear of the rigorous torment of the vigil,[526] unjustly decreed against them. [Citations.] And this is true even though they still persevere in the same confessions. [Citation.] For as we have said in our past argument [cf. p. xxxv] (which may be reassumed here by favor), the Constitution of Paul V, of sacred memory, issued for the reformation of the tribunals of the City [Citation], commands that this torture be not inflicted except under two concurrent circumstances. One of these is that the accused be under the strongest of proofs, and the other that the crime be very atrocious. And the authorities alleged in my argument § *Quatenus,* etc. [cf. p. xxxv] testify that it has been so practiced.

Nor indeed can the asserted [discretionary] powers of this tribunal give support; because, whatever they may be, they have no place unless the crimes are punishable by death. Raynaldus [Citation] gives this reason: Whenever the defendant should not be condemned to death, he also should not, for the purpose of getting confession from him, be exposed to torture which might cause death, as it almost caused the death of Alessandro, who fainted dead away under two turns at the same torture.[390]

But the crime, which has been imputed to Count Guido and his helpers, and which they themselves have confessed, is murder neither of the first nor of the second degree, as was fully proved in my past argument. And indeed since Count Guido was moved to kill or to have killed both Francesca Pompilia, his wife, and Pietro and Violante, his parents-in-law, because of his sense of honor—namely, on account of the adultery which Francesca Pompilia committed with their conspiracy and aid, this fact relieves from the penalty of death, not merely himself (according to the texts and authorities alleged in my said argument), [Citations] **[cxxvi]** but also his helpers (according to the authorities likewise alleged in said argument). [Citations.]

Gabriellus states: "And much less ought those to be punished with death, because if we will only examine the common opinion of wise men, just anger may excuse from a graver penalty than this; for according to the Gracchian law, Code concerning Adultery, even those who are called and led to the crime should likewise be excused."

Aside from what may be claimed in this present state of the case, that the plea of injured honor is not established, the decree in condemnation [271] of the Canon Caponsacchi for the said adultery issued in this tribunal, September 24, last past, and given in full in our Summary, No. 8 [cf. p. xcix], makes the matter clear and manifest. [Citations.] For it is there said: "Giuseppe Maria Caponsacchi, of Arezzo, for complicity in the flight and running away of Francesca Comparini, and for carnal knowledge of the same, has been banished for three years to Civita Vecchia." Nor can these words be said to be merely the title of the case,[274] which does not make any one guilty, as my Lord Advocate of the Fisc supposes; but the very decree and the title of the case, as seen by me in the original Process, was that which follows: *Aretii in Etruria fugæ a viro.*

But, in brief, the said Canon was condemned merely to the said punishment because he was a foreigner [272] and had committed his crime outside of this State; in such case he should be dismissed merely with exile. [Citation.]

Nor is it true that the Court receded from the said decree and still less that a modification of it was demanded. For we have no other fact than that for the purpose of giving some little indulgence to the still asserted honor of the wife and to the decorum of the said Canon, for which the Procurator of the Poor, their defender, kept sharply and **[cxxvii]** incessantly urging, in the command for imprisonment, instead of the words of the said decree, these other words were applied: *Pro causa de qua in actis.* These words do not imply the correction of the preceding words, but indeed the virtual insertion of all the acts, and consequently of this same decree also. [Citations.]

And this is all the more true because the said decree could not be changed unless both sides were heard; which, as I remember, was the response given to the said Procurator when he insisted upon the said modification. [Citations.]

But why should I now insist on former matters when there is such conclusive proof of the adultery and further dishonor of the said wife from the many strong reasons deduced in the present stage of the case, and well weighed by my honorable colleague, the Procurator of the Poor, in his customary excellent manner? (I do not here repeat them, that I may avoid useless superfluity.) Hence there is left no room for doubt as to the outraged honor, which indeed impelled Count Guido to the commission of crime. For it would be quite enough that a cause of this kind be verified, even after one has committed the crime, as Bertazzolus advises on this point. [Citations.]

Still further, there is no need now to insist on past matters because Count Guido has stated the plea of injured honor not merely against his wife, but against his parents-in-law in his confession, especially page 98:

" Thereupon followed her flight, which was so disgraceful, not merely to my house, which is noble, and would have been so to any house whatsoever, even if of low estate. She made this escape by night with Canon Caponsacchi and his companions. In the progress of her flight along with the driver of the carriage, she was seen by the said driver, kissing and embracing the abovesaid Canon.[206] Still further, I have found out that they slept together at Foligno [195] in the posthouse and then again at Castelnuovo. By such proof, she stands convicted as an adulteress, not merely for this, but for other like excesses, which I have since heard that she committed in Arezzo with other persons." [123] And page 672, where we read: " And when the said Santi was asked whether he would give ear to offering an affront to the Comparini, because of my honor and the plots they [cxxviii] had made against my life, Alessandro responded that he would do it, and if some one else were necessary he would find him. Accordingly, after a few days, I received in my home Biagio, who has been twice named above, in company with the abovesaid Santi, and he said that he also would give ear to it, as being specially a question of my honor and the contrivance against my life." And at page 678: " And while we were staying in the same vineyard,[310] that is in the house within it, we spoke of various matters and particularly of what was to be done, namely of the affronts to be offered to the Comparini (that is to Pietro, Violante, and Francesca, my wife) and of wounding them because they had taken away my honor, which is the chief thing, and had also plotted against my life." And at page 683, near the bottom, we read: " And I would have so much to say that one might write from now till to-morrow morning, if I wished to tell all the trouble and expense I have suffered from the said Comparini. But all this would amount to nothing, if they had not touched my honor and plotted against my life." And page 684: " The Santi above-named was a laborer of mine at my villa of Vittiano,[159] [311] and consequently was informed of all these troubles I had suffered at the hands of the said Comparini. He also knew of the very indecent flight made by my wife in the manner elsewhere told. The abovesaid Alessandro then began of his own accord to seek me out and did find me, so that he might give ear, in the event that I should wish to avenge my honor and the plots which they had made against my life." And page 699: " And she together with Canon Caponsacchi was overtaken by myself at Castelnuovo, where they were arrested by the officers [229] and conducted to these [345] prisons.[255] In the Court, many a time I exaggerated the excess of her supposed conception in order that they might be punished. I never having seen what would be considered expedient in an affair of such importance to my honor, have been obliged to take some resolution for recovering it, because the Comparini, with greatest infamy, had transferred to me their own ignominy." And page 722:

" And what I said to Alessandro, Biagio, and Domenico, I also said to Francesco once when he, knowing the offenses against my honor which I had suffered, asked me if I were ready to give a beating to my said wife. And I then replied to him that she deserved not merely a beating, but death."

[cxxix] Such a confession should be accepted with its own qualifications, for the Fisc can not divide and detach this from it (according to the usual theory). [Citations.]

This is undoubtedly true, when, as in the present case, one is arguing for the infliction of the ordinary penalty, whatever may be said, according to some authorities, for the infliction of an extraordinary penalty. [Citations.] Ludovicus extends this conclusion to all qualified confessions in any kind of crime.

This is true especially when the qualification is not merely propped up in some way, but is conclusively proved. [Citations.] For beside the said decree, and the other considerations above, we have his fellows in crime especially swearing that their services were required by Count Guido for committing crime in his very company for the abovesaid reason. Especially is this the case with Blasio Agostinelli, page 316: " Signor Guido told me that his wife had fled from him in company of an Abate, and had carried away some money and jewelry.[200] He led me into the very room where she had robbed him of the said jewelry and money, and told me that he wished to go to Rome to kill his wife, and that he wished that I and the said Alessandro would go with him," etc. And page 317: " At the above time the said Guido told me that his wife, for the purpose of fleeing securely with the said Abate, and that he might not perceive it, had mixed an opiate [196] in the wine for dinner to put himself and all the rest of them to sleep. **[cxxx]** He also said that he was in litigation with his father-in-law, who had not merely sworn that the said wife was not his own daughter, but still further had received her back into his home, after she had run away from her husband, although he would have put her in a monastery after he overtook her at Castelnuovo during the flight." And Alessandro Baldeschi, page 623: " The said Guido in the presence of myself, as well as that of Biagio, Francesco, and Domenico, told me that he ought to kill the lady, that is, his wife, who was here in Rome, to recover his own honor; and also to kill the father and mother of the said wife because they had lent her a hand in the insult she had offered to his honor." And page 645: " He told us also, in the presence of the keeper of the vineyard,[310] that he was obliged to kill his wife, his father-in-law, and his mother-in-law, because the latter had lent a hand to their daughter in her ill-doing, and had acted the ruffians too, and because the said Guido also declared that these same people, whom he had to kill, had wished to have himself, that is Guido, killed."

Nor can the plea of injured honor be excluded by the attestations [353] of those who afforded assistance to Francesca Pompilia even up to the time of her death: for they attest that she made declaration that she had never violated her conjugal faith.[355] These assertions are merely testimony given outside of a trial, and do not demand belief. [Citations.]

And more especially as they were extorted and begged [353] (while the suit was pending and the other side was not summoned) by the heir of the same Francesca Pompilia, for avoiding the prosecution by the Monastery of the Convertites,[364] which was laying claim to the succession to her property on account of her dishonesty. Such shame would cause all of her hereditary property to be sequestered and judicially assigned to the said Monastery by law. [Citations.]

And this objection to their testimony is especially true because some of the witnesses who swear as above are beneficiaries of the same Francesca Pompilia, so that they might be swearing for their own advantage. For if her dishonor were substantiated, her property would devolve upon the said Monastery, and consequently they would be shut out of their legacies. [Citations.]

And however far these attestations may occasion belief, a declaration of this kind serves to no purpose, because no one is presumed to be willing to reveal his own [cxxxi] baseness. [Citations.] So likewise Francesca Pompilia should not be believed, especially when testifying outside of a court and without oath. [Citations.] Much less are the aforesaid witnesses to be believed, lest more credence be given to hearsay evidence than to its original. [Citations.]

Nor can it be said that no one is presumed to be unmindful of his eternal safety;[362] for all are not presumed to be Saint John the Baptist. [Citation.] Especially when the argument is concerning the prejudice of the third.[534] [Citation.] And still more so when the argument is for punishing more gravely the enemy of the declarant. [Citations.]

And therefore, as the plea of injured honor is substantiated, it makes no further difference that the said murders were committed after an interval, according to what we have very fully affirmed in our last argument, § *nec verum est* [cf. p. xxvi], even down to § *prædictis nullatenus*. [Cf. p. xxxii.] There it was shown that this is the general opinion of authorities, and in accordance therewith judgment has been given from time to time not only in the Sacred Courts, but also in all the other tribunals of the world, as Matthæus well observes, etc. [Citation.]

Nor can there be any departure from this opinion in the present case on the ground that Count Guido did not kill [222] his wife in the act of seizing her in her flight with her lover, but was indeed content to carry her before the judge as an adulteress. For it would not have been safe for him to kill her then; because he was alone and she was in company of

the said lover, a daring young fellow, strong,[29] and well armed, and accustomed to sinning. And what is more, this lover was prompt and well prepared to make resistance, lest his beloved Amarillis [163] should be snatched from him. Likewise she was prompt and ready to hinder her husband even with a sword **[cxxxii]** she had seized and drawn,[227] lest her beloved Mirtillo [162] might be offended. Guido should not therefore be considered to have spared her nor to have remitted his injury. But lest she might escape into more distant parts where he could have no hope of the due vengeance, his just and sudden anger then counseled him to have her arrested by officers,[222] so that he might kill her as soon as possible; and when afterward a suitable occasion arose, if he killed her, it should be considered as if he had slain her immediately. [Citations.]

And, generally, whatever is done after an interval may be said to be done incontinently, if done as soon as a chance for doing it was given. [Citations.]

But so far is the Law from believing that this kind of injury is remitted by a husband that it rather believes that the spirit of vengeance always continues in him. Therefore it comes about that a wife may be held responsible for looking out for herself; so much so, indeed, that her death which follows thereupon may never be said to be treacherous. [Citations.] Muta speaks of the case of a husband who had his wife summoned outside of the city walls by his son, in order that he might kill her safely, and yet the husband was condemned only to the oars for seven years.[395]

[cxxxiii] This also makes some difference in the case, that certain authorities hold that a husband may indeed hide his wife's baseness for the purpose of taking vengeance upon her safely later on. [Citations.] Likewise he may have his wife hide his disgrace for the purpose of taking vengeance securely upon the one who wishes to offend her modesty, according to the very famous council of *Castro 277, lib. 2.*

And this is all the more to the point because Count Guido was censured by the Procurator of the Poor himself, the defender of Francesca and Canon Caponsacchi, for this appeal to the judge. [Citations.] We have alleged many of these authorities in our past argument, § *et hæc nostra* [cf. p. xxxi]: for they unanimously assert [486] that husbands are considered vile and horned, if they do not take vengeance with their own hands, but wait for that to be done by the judges, who themselves ridicule and laugh at them. Therefore it is no wonder if the luckless husband, after he had made the said recourse to the judge, as the foolish heat of his wrath suggested to him, wished to avenge himself for his lost honor. For he sinned that he might shun the censure of the vulgar and learned alike,[487] and that he might not add this infamy also to his lost honor.

Nor is it at all to the point that the said Count Guido, in his confession in one place, beside speaking of his injured honor, also mentions the plots aimed at his life; because the force of honor was far the stronger in his mind, as he himself asserts, page 678: "In consideration of the fact that they had taken away my honor, which is the principal thing." Nor ought any consideration be given the other cause; because, as it is so much weaker, it should be made to give way to the aforesaid reason, as was proved in our former argument, § *Et in omnem Casum* [cf. p. xxxiv], where for another purpose we have adduced Matthæus [Citation], who is speaking in these very terms.

And so far as we desire to give attention to this other cause, it likewise is sufficient for escaping the ordinary penalty. [Citations.]

[cxxxiv]

The Fisc acknowledges the relevance of the abovesaid matters; he therefore has recourse to the circumstances attending the crime, namely, the assembling of armed men,[409] the lawsuit [421] going on between Count Guido and the Comparini, the prohibited arms,[413] and finally the place where the crime was committed.[419] For Francesca Pompilia was detained in the home where she was killed, as a prison. But a response is easy because such circumstances can indeed somewhat increase the penalty of the principal in the crime, but not so much as to raise it to the highest degree, in such a way that Count Guido and his associates should come to be punished with death. For we find it decided in these circumstances as quoted by Muta [Citation]: "A decision was therefore made in view of the case in general, March, 1617, before his Excellency,[140] wherefrom the ill manner of killing her [488] was evident; for he had her summoned by her son, and afterward her body was discovered, which the dogs had eaten outside of the walls. Leonardus [395] was therefore condemned to the royal galleys for seven years." And Sanfelici [Citation] says: "And although some of them were condemned to banishment, it was because of their mutilation of the privates, a crime for which the Fisc claimed they ought to be punished by the penalty of the *Lex Cornelia de Sicariis*."

And Matthæus [396] [Citation] says:

"When the matter had been more carefully considered in the Council, it was decided that the husband had proceeded too treacherously [489] in pretending absence, in taking his brother with him, and in killing with prohibited arms; because merely by the use of firearms a crime is rendered insidious with us, etc. And it was accordingly decided that, because of this excess, he should be condemned to the penalty of exile for four years and to the payment of 2,000 ducats." And this at the stage of appeal was confirmed [Citation] where we read: "And thus it was decided in the face of the facts proposed in condemning Francesco **[cxxxv]** Palomi to the penalty of the galleys for ten years, etc.,

from the aggravating qualification of firearms. To the same penalty, Antonio Alvarez was condemned, who had deliberately killed his wife because she was playing him false, etc. The penalty was increased because he was judged to have omitted this earlier, since he did not complain of mere adultery, but of her living as a strumpet. And she could not do this without the indifference and connivance of the husband."

And our reasoning is manifest, because it can not be denied that Count Guido and his associates committed all the aforesaid crimes on the same ground of injured honor. Because just as this excuse should be considered sufficient for escaping the ordinary penalty for murder, so likewise it should be considered sufficient for avoiding the other punishments whatsoever, appointed in the Apostolic Constitutions against those committing other crimes expressed in the same; as the principal purpose of the delinquent is always to be attended. [Citation.]

So it was declared on this point for the purpose of avoiding the penalty inflicted in the 75th Constitution of Sixtus V [Citation] against those who assembled armed men, whenever these men were evidently assembled for the purpose of committing some other crime, such as breaking prison and freeing those detained therein. And three very celebrated students of the Sacred Law, namely Coccini, Blanchetti, and Orani so decided. Their decision is included among others gathered by Farinacci [Citation], and he testifies that it was so decided in the full chamber, in which the case was proposed and examined at the order of Clement VIII, of sacred memory.

Nor does what he wrote later on to the contrary in aid of the Fisc, of which he was then Advocate, stand in refutation; Spada. [Citation.] For this opinion of his was refuted clearly and rejected on the most substantial of reasons and arguments. [Citations.]

And in such conditions, for the purpose of avoiding the penalty of the Banns **[cxxxvi]** or Apostolic Constitutions prohibiting the carrying of arms, I have alleged many authorities in my past argument, § *neque plures* [neque vero] [cf. p. xxxix] and above the rest, Policardus, etc. [Citation], who fully examines the matter. My honorable Procurator of the Poor gathers together others in his present argument, § *remanet tandem.* [Cf. p. cxix.] To these I add, Caballus [Citations], where it says that preparatory acts are to be included with what was prepared, and he testifies that it was so decided by the Sacred Council of Naples.

Likewise, for the purpose of avoiding the penalty set for those killing one detained in prison,[419] and so remaining in the custody of the Prince, I have cited many authorities in my past argument, § *similiter nec aggravari.* [Cf. p. xxxiv.] To these I now add. [Citations.]

Nor does it make any difference that Policardus, in the place cited, and some of the other authorities recently alleged speak of homicide committed in a quarrel or for self-defense. For the attendant circum-

stance of a quarrel relieves one committing crime from the ordinary penalty of the crime only in so far as it overlooks the crime in one who, when provoked, wished to be avenged (as Ulpian says), and insomuch as one swept away by a just indignation is not in the fullness of his intellect.[494] [Citation.]

But both of these reasons without doubt stand in favor of the husband or of any one else committing murder for honor's sake [Citation], even if they do so after an interval. [Citations.]

And in these very conditions, one killing an adulterous wife after an interval is excused because of just anger, which causes him not to be in the fullness of his intellect,[494] etc. [Citations.] **[cxxxvii]**

Ulpian [Citation] also says: "He ought to be angered with a wife who has violated his marriage with her, and his wrath should spring from indignation for contumely when received, and his nature should arise so that he would drive her from himself in whatever manner he could." "For it is more difficult to restrain one's anger than to perform miracles," [477] as St. Gregory says. [Citation.]

The other authorities, indeed, who speak of persons committing murder in self-defense with prohibited arms or in prisons should likewise be in our favor. For the defense of honor in the case of men of good birth, especially of nobles, is to be likened to the defense of life itself. [Citations.] And indeed it surpasses life, according to the words of the Apostle [383] in his first letter to the Corinthians, chapter 9: "Better [483] were it for me to die than that anyone should deprive me of my glory." And St. Ambrose:[394] "For who does not consider an injury to the body, or the loss of patrimony, less than injury to the spirit or the loss of reputation?" And the third Philippic of Cicero: "We are born to honor and liberty; either let us keep them, or die with honor." [Citations.]

So that he who spurns his own honor,[474] and does not see to regaining it by vengeance, differs naught from the beasts. [Citations.] Indeed he should be considered even more irrational than the very beasts, according to the golden words of Theodoric,[384] as quoted by Cassiodorus, which we have cited in our past argument § *Nec verum est.* [Cf. p. xxvi.] [Citations.]

Then as to the lawsuit [421] going on between Count Guido and the Comparini as regards the fraud about the birth, beside what was said recently **[cxxxviii]**, I pray that it again be noticed that the Constitution of Alexander does not enter where some provocation has arisen from the one injured, as Farinacci well affirms [Citation] in following a decision of the Rota, which he places at the end of his counsel. And we have weighed this heretofore in our past argument § *absque eo quod.* [Cf. p. xxxiii.] Such provocation in the present case resulted from the

injury which the said Comparini inflicted upon this same Count Guido while the lawsuit was pending, because of their complicity in the said flight and adultery committed by their daughter on that occasion.

The other lawsuit which Francesca Pompilia made pretense of bringing against Count Guido, for divorce,[266] might be omitted. For beside the considerations offered by my honored Procurator of the Poor in his present argument, § *quæ etiam aptantur* [cf. p. cxviii], this suit was brought illegally, because the warning of it, as I suppose, had reached only Abate Paolo, the brother of Count Guido, who had no authority in this matter. And this is true especially because it is not proved that the same Guido had any knowledge of that suit brought, as is now pretended.

As to Blasio Agostinelli enough has been written in the former argument, since he has not been examined anew,[315] and in his former examination he confessed only that he was present at the said murders, but that he had no hand in them. So the more rigorous opinion of Caballus can not apply to him, who said that such helpers are not immune from the penalty of murder whenever they kill anyone with their own hands. For the opinion of this author was proved by us to be erroneous, in our past argument, § *quidquid in contrarium*. [Cf. p. xxxviii.]

I might wish to add something to what has been said in the past argument as to the alienage and minority [423] of Domenico and Francesco; but it is not yet very clear under what law the Fisc pretends that they miss these. Therefore I will rest satisfied with this response, believing certainly that it will not chance that my Lord Advocate of the Fisc may fashion his own allegations and also respond to ours without communicating them to me, as happened in the past argument very greatly to the astonishment of myself and of others. For he and I both ought to seek the truth and to be advocates of that, as both of us are officers [376] of the Prince **[cxxxix]** according to the considerations of Raynaldus. [Citation.] Who indeed desires that anything else than justice be administered, and especially when dealing with poor imprisoned wretches? [508] In their cause, piety should triumph, because they are the treasure of Christ. [Citation.]

DESIDERIO SPRETI, *Advocate of the Poor.*

By the Most Illustrious and Most Reverend Lord Governor of the City in Criminal Cases:

Roman Murder-case.

For Count Guido Franceschini and his Associates, Prisoners, against the Fisc.

New Memorial of law, by the Advocate of the Poor.

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

[cxli] An Account of the Facts and Grounds of the Franceschini Case.[55]

[Pamphlet 10.]

The property[63] of Pietro Comparini did not amount to more than the sum of 10,000 or 12,000 scudi,[67] subject to a reversionary interest[68 69] coupled likewise with the obligation to compound a good percentage of the income.[70] He therefore had to live sparingly to avoid being reduced to a state of destitution, there being a bar against his use of the capital and of a part of the income. He was also too indulgent to his stomach and was given to laziness,[71] and furthermore had taken a wife with a very small dowry. Then lawsuits came upon him, the income of his bonds[533] was reduced, and other misfortunes befell him, so that he was brought down to a state poor and miserable enough.[72] So much so that he was several times arrested for debt and, after making a statement of his property, received from the Papal Palace secret alms each month.[73]

When he found himself in such straits, he[74] decided to marry off Francesca Pompilia, his daughter, to some person who would undertake the burden of supporting him together with his wife, Violante Peruzzi,[65] who was a very shrewd woman and of great loquacity. It was with her advice that he had undertaken the affair, and the marriage with Count Guido Franceschini was considered suitable. For when the latter had conducted his new wife and her parents back to Arezzo, his own country, he might be able to find some opportune remedy for their necessities, by the assistance in Rome of Abate Paolo Franceschini his brother, an active and diligent man;[50] thereby putting in order the patrimony[90] of Pietro, which had been sequestered and tied up by his creditors. Therefore, when the dowry had been set at twenty-six bonds,[91] with added hope of future succession to the rest of his property by virtue of the reversionary interest[69] to which the wife was entitled, the bargain was accepted. This bargain was advantageous to Pietro and his wife in freeing them from the straits in which they found themselves.[77] And it was likewise advantageous to the Franceschini, as the diligence of the Abate, and some temporary expenditure by their house well attests. For they might well believe that they would gain in time the aforesaid property either entire, or little decreased.[92]

[cxlii] Such from the beginning were the mutual purposes of that unhappy marriage. From this fact one may see how slight a pretext there is for saying that Count Guido, while making the arrangements, had tricked Pietro and his wife by giving an inventory of property with

an annual income of 1,700 scudi,[92] which income was later proved to be much less. Because the primary end for which the marriage was concluded might very well have been obtained by showing a much smaller income. For it is known that when this inventory was shown by Violante to Pietro Comparini, he said on seeing it: "Ho, ho, it would have been enough for me if it had been only half as much." And indeed it would have been the greatest stupidity in Pietro to have given his daughter a husband, upon the simple inventory of a foreigner and without finding out if this were true so that the real impelling cause of the marriage had been the resources represented in the said inventory. Not even on the mere grounds of propriety and civility may Guido be reproved; because when the said inventory was produced by Pietro in the trial, the Abate Paolo Franceschini was very much surprised at it, so that he took his brother to task about it by letter, and Guido replied that he had done it at the instigation of Violante. For she desired the completion of the marriage and, seeing Pietro irresolute, she induced Guido to give the abovesaid inventory with some modifications for the purpose of stimulating her husband thereto.

The marriage was finally effected, and they all went back together to the city of Arezzo.[94] Nor were the Comparini mistreated there, as they tried to prove by the unauthoritative deposition of a servant,[110] who had left the house in anger. One mere reading of this deposition is enough to assure one that she did this with a bad motive and at the instigation of others, as she herself has declared to various persons. This deposition shows sickeningly the distasteful prejudice with which it was conceived, and especially where she says that a little sucking lamb [cf. p. li] was made to serve as food for seven or eight persons throughout an entire week. And there are other matters alike unfit for belief. [The Comparini] were indeed treated with all consideration and decorum, as Monsignor the Bishop [cf. pp. xci-xcii] and the Governor [cf. pp. lxxxi-lxxxii] of the city attest; and they are persons much better qualified to judge and much more worthy of belief than a malign and suborned servant. But you may also have the attestation of one who was serving in that household for thirteen months, during the time when the abovesaid Pietro and Violante were there [cxliii]; and he is able to tell many particulars of the good treatment which they received at the hands of the Franceschini.

It is quite true that disturbances of considerable importance arose in that household; but they were occasioned by the bitter tongue of Pietro [95] and the haughtiness of Violante, his wife. For they laughed at all the proceedings of the Franceschini, and thrusting themselves forward, with pretense of superiority, they brought upon the mother of the Franceschini, and upon the rest of the family, bitter vexations, which were hidden at the time, to avoid violating the laws of hospitality.

And notwithstanding all this, when Pietro and his wife decided to return to Rome, as soon as they expressed their wish, they were provided with money for the journey, and in Rome with furniture to put in order the house they had left.[99]

As soon as Pietro and Violante arrived in Rome,[100] a judicial notice was dispatched at the instance of Pietro, in which he declared that Francesca Pompilia was not really his daughter, and that therefore he was not bound to discharge his promise of dowry.[260] To prove this fact, he brought the attestation of his wife Violante. In substance, she declared that for the purpose of keeping her husband's creditors from their rights,[107] by virtue of the reversionary interest,[69] and also for the purpose of enjoying the income of the bonds,[533] she had feigned that she was pregnant and then, with the aid of a midwife, that she had brought forth a daughter.[103] This was Francesca Pompilia, who had come of a most vile parentage.

From this blameworthy act made public so suddenly throughout the entire Court, there necessarily arose in the Franceschini an intense hatred toward the authors of it. But they were able to restrain themselves from the due resentment in the hope that if Francesca Pompilia were not indeed the daughter of Pietro and Violante, as was supposed at the time of the espousal, the marriage might be annulled and they might thus purge themselves of such a blot on their reputation.[297] Witnesses of this feeling of theirs are found in the many authorities and experts who were requested by the Franceschini to give thought to that point and to express their opinion of it. But as these did not agree, the Franceschini were unwilling then to commit themselves to so doubtful an undertaking, in the prosecution of which they would necessarily be obliged to presuppose and confess that she was not the child of the Comparini. By such a confession **[cxliv]** they would be prejudiced in their interest in the dowry. And therefore they thought well then to pass the matter by that they might avoid exposing themselves to the danger both of losing the dowry and of being unable to nullify the marriage.

Nevertheless they opposed the notice and obtained for Francesca Pompilia the continuance in quasi-possession of her daughtership [263] and a decree for the transfer of the dowry bonds.[533] But Pietro appealed from the decree,[264] and the case was continued in the *Segnatura di Giustizia*.[262] This was followed by the copious distribution of pamphlets [109] throughout Rome, which had been printed by Pietro to the very grave injury of the honor of the Franceschini, not to say to their infamy. But the latter were able again to restrain the just resentment of their irritated minds by cherishing the hope of making the court acknowledge (as did follow) no less the falsehood of their adversaries than their own truth. Supported by this hope, they subsequently bore

with all patience the many insults planned against them by various cliques, and the twists and turns for hindering the transfer of the dowry bonds, the Comparini having trumped up various creditors, whether real or pretended. On account of this opposition, the Franceschini were made to feel the inconvenience and expense of that transfer. Nor have they had any benefit of the income; of which they have been able to obtain not even a two-months' payment.

To such a pitch had the affairs of the two parties come, when Guido, waking up one morning, found that his wife was not in bed. As soon as he arose, he found that his jewel box had been rifled [198] [200] and his wife had fled. Nor was the suspicion lacking that she had given an opiate [196] to Guido and the entire household the preceding evening; and it was thought that this had happened at the suggestion of Pietro and Violante, as he had more than once heard threats of it. He traveled quickly along the way to Rome,[202] and after a headlong journey he overtook his fugitive wife, in company with Canon Caponsacchi of Arezzo, at the inn of Castelnuovo.[210] And as he was alone and unarmed, and they were armed and resolute, he saw that he was unequal to avenging that excess. He therefore thought it well to have them arrested by applying to the authorities of the said place.[222] [cxlv] The court [226] had both of the fugitives captured by the police.[229] They were consigned to the jurisdiction of Monsignor the Governor of Rome,[270] and were then conducted to the New Prisons.[255] [345]

The Fisc, indeed, makes much out of the particular that Franceschini should have avenged his insults in the act of overtaking them;[403] but, as an adequate response, one should think of the impossibility of his carrying out his revenge because of their precaution in the matter of arms,[221] for Franceschini had heard along the way that the fugitives were traveling armed. In proof of this, also, when his wife saw her husband she had the hardihood to thrust at his life with bare sword.[227] For this reason it was prudent moderation to check their flight then by arresting them. And this was all the more true because the adultery of his wife had not then been proved, and possibly he had a repugnance against imbuing his hands with the blood of her whom he had often held in his arms, as long as any hope was left alive of regaining his reputation in any other way than by her murder.

But afterward there were found the mutual love letters [232] of the same fugitives, barefaced and immodest and preparatory to flight. And from the cross-examination of the driver it became evident that during their journey in the carriage they had done nothing else than kiss each other impurely.[206] And from the deposition of the host at Castelnuovo, Guido found out that both of them had slept in the same chamber.[215] Finally, from the sentence or decree of the court in condemnation of the Canon Caponsacchi to banishment to Civita Vecchia

for three years, for "having carnally known Francesca," [271] the notoriety and publicity of this adultery followed. Let any one who has the sense of honor consider in what straits and perturbations of mind poor Guido found himself, since even the very reasonless animals detest and abominate the contamination of their conjugal tie, with all the ferocity that natural instinct can suggest. They not only avenge the immodesty of their companions by the death of the adulterer, but they also avenge the outrages and injuries, done to the reputation of their masters. For Elian [385] in his Natural History tells of an elephant which avenged adultery for its master by the death of **[cxlvi]** the wife and the adulterer found together in the act of adultery. And there are other examples also, as Tiraquellus cites. [Citation.]

But returning to the series of events, it must be stated that, after the imprisonment of the fugitives, Guido also came on to Rome and was deeply affected and, as it were, delirious because of the excesses of his wife. He was comforted by his good friends with the hope that this attempt at flight, taken along with the lack of decent parentage of Francesca (under supposition of which he had contracted the marriage) would facilitate the dissolution of that marriage,[297] and in that way all the blots upon his reputation would be canceled. Hence, with this hope he returned to his own country, leaving the management of the affair to the Abate, his brother.[256] The Secretary of Sacred Assembly of the Council may be a witness of this; for Abate Paolo presented the matter to him and entreated him to propose, in that sacred assembly, this point of law as to the validity of the marriage then—that is, after a criminal sentence in the Tribunal of Monsignor the Governor [270] had been obtained.

In the meanwhile the same Abate attended to the plan of petitioning the conclusion of the said criminal cause.[269] When Pompilia, to avoid conviction by the love letters, had recourse to the falsehood that she did not know how to write,[235] it was easy for the Abate to convict her of that lie by showing the marriage agreement signed with her own hand, as well as by a Cardinal [39] now dead, by means of the recognition of the handwriting. But in spite of this, when the merits of the case had been made known everywhere, the same Abate perceived that instead of his being pitied, little by little every one began to laugh at him and to deride him, as he has told several persons. Perchance the attempt was being made to introduce into Rome the power of sinning against the laws of God with impunity, along with the doctrine of Molinos [528] and philosophic sin, which has been checked by the authority of the Holy Office. So many persons would desire to blot out from the minds of men their esteem of honor and of reputation in order that they might sin with impunity **[cxlvii]** against the laws of men and might give opportunity to adulterers without any check from disgrace or shame.

And it is certain that the Abate, seeing the cause unduly protracted, had just grounds for placing it at the feet of our Lord [the Pope],[280] with a memorial in which he declared that he could no longer endure such important and such various litigation and vexation arising from that luckless marriage, and he prayed that a special sitting be appointed for all the cases—that is the ones concerning her daughtership, her flight, her adultery, the dowry, and others growing out of the marriage as well as the one concerning its annulling. But he had no other reply than: "The matter rests with the Judges." [281] So, with devout resignation to His Holiness, he awaited the outcome of the said criminal trial, from which he hoped to regain, at least in part, the reputation of his house.

In the meantime, Pietro Comparini was supplied with plenty of money from the full hand of some unknown person, possibly a lover of the young girl. He vaunted his triumph boldly in the throngs and the shops, places of his accustomed resort, and he praised the resolution and spirit of his daughter for having known how to trick the Franceschini with a disgraceful flight and with the thievery of such precious things, and for having found an expedient to give to the judge in the trial such good replies with all details thereof. He also boasted that in a little while she would return to his home despite the Franceschini. For he would bring so many lawsuits and scandals upon them that they would be forced to be silent and to let matters run on. For these statements we can have the attestations of many persons, in case they are needed. Therefore, because of such stinging boasts and such irritations, the mind of Guido was ever more embittered in spite of all the power he could master for restraining the impetus of his anger which had been provoked by such injuries.

Francesca Pompilia had been previously transferred from the prisons into the Refuge called *della Scalette,*[276] where she stayed for some months.[285] Then it was discovered that she was pregnant and many attempts were made to secure an abortion. For this purpose, powders and other drugs were given several times by the mother. As this proved useless she was remanded to the home of Pietro and Violante [284] on the pretext [283] of an obstruction and the necessity of relieving herself. **[cxlviii]** There, at the approach of the physicians, her pregnancy was discovered. The truth is, that when her womb began to grow, the nuns did not wish for her confinement to take place within their walls, and therefore a pretext was found for removing her on the grounds of the said obstruction and the necessity of removing it.

Now at this point the Abate found it necessary to break the bonds of his forbearance; for although it was indirectly that he was offended, that is, in the person and honor of his brother, nevertheless it seemed to him that every man's face had become a looking-glass, in which was

mirrored the image of the ridicule of his house. Therefore, being humiliated, though he was strong and constant in other matters, he often burst into bitterest tears, until he felt very much inclined to throw himself into the river, as he indeed declared to all his friends.[305] And to free himself from such imminent danger, he decided to abandon Rome,[304] the Court, his hopes and possessions, his affectionate and powerful patrons, and whatever property he had accumulated during thirty years [43] in the same City. Any one may imagine with what pain he parted from these and went to a strange and unknown clime, where he would not meet the fierceness of his scorners, which had been merited neither by himself nor his household.

But the injury of Guido, arising from a sharper and severer wound, within his very vitals as a husband, had the power to arouse his anger even to the extreme. Nor did he consider it sufficient redress to punish himself with voluntary exile for the crimes of others; for such a resolution might be considered by the world as a plain proof of his weakness and cowardice. He soon had sure information that, during the month of December, Pompilia had given birth to a boy [299] in the home of the Comparini, which child had been intrusted secretly to a nurse.[309] He also heard that the infamy of the friendship with the said Canon had been continued, inasmuch as he was received as a guest into the said home (as was said).[293] For like a vulture, Caponsacchi wheeled round and round those walls, that he might put beak and talons into the desired flesh for the increase of Guido's disgrace. Guido accordingly felt the wildest commotion in his blood, which urged him to find refuge for himself even in the most desperate of determinations.

[cxlix] In the meantime he turned over again and again, as in delirium,[306] his sinister thoughts, reflecting that he was abhorred by his friends, avoided by his relatives, and pointed at with the finger of scorn by every one in his own country. And the word went abroad that in Rome they were selling his reputation at an infamous market. (This matter has moved the treasurer of the Convertites,[364] since the death of Pompilia, to begin proceedings and to take possession of her property.) Added to the above were the continual rebukes which he received because of his lost honor, so that he became utterly drunk with fury.[306] He left Arezzo with desperate thoughts, and when he had reached Rome he went to that home which was the asylum of his disgraces. Nor could he have any doubt how much the very name of the adulterer was respected; for when Guido made pretense of delivering a letter of his sending,[321] the doors were immediately thrown open: and so, scarcely had he set his foot upon the threshold, before he saw his dishonor proving itself before his very face; of which dishonor he had heretofore had only a distant impression in his imagination. Then bold and triumphant, he no longer feared to upbraid her with unmasked

face for all the insults which had been inflicted upon his honor in that household; and as he looked all around at those walls [322] incrusted with his heaviest insults and with his infamy, the dams of his reason gave way and he fell headlong into that miserable ruin of plunging himself with deadly catastrophe into the blood of the oppressors of his reputation.

There is no doubt that Franceschini has committed the crime of a desperate man, and that his mind, when it was so furious, was totally destitute of reason. As he had lost his property, his wife, and his honor, there was nothing else for him to lose unless it were his miserable life. For, as Paolo Zacchia, the learned philosopher and jurist says in speaking of anger in man: "Such and so great is its force that it does not differ at all from insanity and fury." Galenus very clearly affirms this, adding that when in law it is known that crimes are committed in such a state, they are punished with a smaller penalty, even though it has to do with the very atrocious crime of parricide. Calder [Citation] also gives many other matters on our point in No. 27 and the following numbers. And these theoretic propositions [cl] are verified in actual practice in Guido; for he was so utterly mad and void of reason that he entered upon so great an undertaking even at an hour of the night when many people were around. And after that he took no precaution,[334] such as any other person of sound mind would have taken in governing his actions. He set out by the high road on his journey of about seventy miles from the outskirts of the city without providing any vehicles,[337] as if he were merely a traveler leaving Rome. These circumstances are plain evidences of an offended and delirious mind. [Citations.] St. Jerome writes in his letters:[476]

"Where honor is absent, there is contempt; and where contempt is, there is recurring insult; and where insult, there indignation; and where indignation, there is no quiet; and where quiet is wanting, there the mind is often thrown from its balance."

Nor in this case does the legal distinction enter as to whether the one driven by anger committed the crime in the first impulse of anger, or after an interval of time. For this distinction might have a place when the anger arose from an insult in some transitory deed, and one that was not permanent. But in the case we are treating the insult provocative of anger consisted of frequent and reiterated acts; that is, not so much in the passing of the wife from the nunnery to the home of Pietro under an empty and ridiculous pretense, but still more from her staying in the said home with the aggravating circumstance of his own infamy (as has been said above). Accordingly, as the injury is permanent because of the continual affronts which the injured one received, so the vengeance is understood to be taken immediately and without any interval.[405] This the defenders of the cause have suffi-

ciently proved in their no less erudite than learned writings with their very strong arguments and their unsurpassable learning.

Nor does it amount to anything for one to say that the crime was aggravated, first by the kind of arms [413] used; for Virgil [A, I, 150] says: *Furor arma ministrat,*[514] nor, secondly, by the company of four, or let us say the conventicle;[409] nor, thirdly, by the place,[417] the excess, or the other circumstances considered by the Fisc. For in a madman, everything is excusable, as it is axiomatic and a very sure principle that nature then arises in such a way that it drives a man from himself, whatever manner is possible, etc. In conformity therewith [cli], Fracosto speaks as follows:[478] " And in truth an ingenuous mind, and one that knows the value of its own honor and reputation, is very painfully offended in a part so sensitive and so delicate; and at such a time reaches the limit of madness and of desperation; for it has lost the light of reason, and in delirium and frenzy can not be satisfied even if it succeed in turning upside down, if that were possible, the very hinges of the Universe, for the purpose of annihilating not merely the authors but the places and the memory of its insults and shames. For " The rage and fury of a man does not spare in the day of vengeance, nor does it grant the prayers of any, nor does it accept in requital many gifts," as the Holy Spirit speaks on this point, through the mouth of Solomon, in the sixth chapter of Proverbs, at the end.[479] With this very well agrees what St. Bernard has very learnedly written in his letter to his nephew Robert at the beginning:[480] " Anger indeed does not deliberate very much, nor has it a sense of shame, nor does it follow reason, nor fear the loss of dignity, nor obey the law, nor acquiesce in its judgment, and ignores all method and order."

There is no doubt that Samson [481] reached this pitch when he fell into the power of his enemies. He suffered with an intrepid mind the loss of his eyes and other grievous disasters, but when he saw that he was destined to serve as a pastime in public places, and when he there heard the jeers and derision of the people, the anger in his breast was inflamed, so that, all madness and fury, he cried out: " Let me die along with the Philistines." And giving a shake to the columns which sustained the palace he reduced it to ruin: " And he killed many more in his death than he had killed while alive," as the Sacred Witness testifies. And Christ himself,[482] although he was very mild and had the greatest patience while receiving opprobrium and insults without ever complaining, yet answered, when he knew that his honor was touched, " My honor I will give to no one." [393] And it is certain that any one who cares for honor and reputation would rather die an honored man beneath *mannaia* [441] than live for many ages in the face of the world with shame and dishonor.

[cliii] This argument, strong as it is, has succeeded in weakening one wise and earnest adherent of the Fisc. And this is why the very learned pen of Monsignor of the Fisc has uttered the following period, which says [cf. p. lxii]:

"But because the Comparini claimed that the furnishing of food to Francesca while in prison was the duty of Franceschini, and the latter declared that it belonged to the Comparini, the Most Illustrious and Reverend Lord Governor, after having the consent of Abate Paolo, own brother of Guido, and his representative in the case, assigned the home of the same Comparini to Francesca as a safe and secure prison under security." But this fact can be clearly explained so that it will not form an objection.

When Francesca Pompilia was about to be taken from the prison to the nunnery, Abate Franceschini was asked to provide the food,[282] with the statement that if he refused there would appear a third and unknown person who would assume the burden of it to their dishonor. Therefore the Abate wished once for all to put an end to any chance of receiving new insults; and to avoid every charge of preserving even the slightest sign of relation with this disgraceful sister-in-law, accepted a middle way proposed to him, namely, that Lamparelli, as Procurator of Charity, should make provision for it by the disbursement of his own funds and should pay it back again by what reasonably belonged to the Franceschini; for he reimbursed himself for it with the money which had been found upon the fugitives, and which had been stolen from the husband; at her capture, this money was placed on deposit in the office, where there remained so much of it still that, after all was over, the balance of it was consigned to the same Abate.

And as when the said Francesca was transferred from the nunnery to the home [284] of Violante, all the preceding and succeeding circumstances made it very improbable that the Abate gave his consent,[288] and as this consent is not found registered among those acts, it seems very clear that it was not given at all. Nor could he legally give it, for he was not the representative of his brother in that matter; for his authorization confined him solely to the power of receiving back [cliii] the money and other things which were deposited in the office. This is proved by his acts and by the story which the Abate then gave to his friends and relatives; and it utterly destroys the assertion of the Fisc, since Abate Paolo says that he was indeed notified that the young woman was obliged to find relief in an indisposition, certified by a physician, and that she was obliged to leave the nunnery and to go back to her father's home. To this, as it seemed a mere pretense, he replied that he could easily undertake to purge the wife in the nunnery without exposing her to such evident danger of greater shame. He also said that he wondered very much that the affection of a father had so suddenly

returned in Pietro Comparini for Pompilia, whom he and his wife had so often denied as their daughter. He wondered how they could both be, and not be,[289] the parents of the said woman, according to their own desires to the injury of the house of Franceschini.

And if the solicitor, for the purpose of giving color to the honor of the said lady, has falsely urged many justifications, it is to be noted that in substance all that he says on that point is founded on what with her own mouth she has said in her own favor and what she has proffered to free herself from the blame of her sins, both at this juncture and in the flight, as well as in the trial which may be referred to; in fact, quite the contrary is evident; and from the external tests which the Convertites [276] [277] intended to make, but from which they abstained when they heard the news of the birth of the son. And would that it had pleased God that she had observed the laws of holy modesty! for in that case so great a misfortune would not have resulted from her whims. We should notice, further, that the declaration made by the wife in the face of death may be doubtful in itself,[362] in the sense that after confession and absolution one's sin is canceled as if it had never been committed, so that in a court of justice she would no longer have any need of pardon. Therefore, from the above-cited circumstances and very strong reasons, there is no room to doubt that Franceschini deserves the indulgence which the laws give to excesses that find origin from the stings of honor. And, if we were within the circumstances under which the case ought to be adjudged according to expediency, without any hesitation, **[cliv]** Franceschini should be punished mildly to diminish the force of immodesty and impudence. For the woman is not without adherents, who triumph throughout all Rome in a coterie of treachery, both in public and in private. This is for the oppression and derision against husbands [56] who have regard for their reputation. And they give the title of pedantry to that circumspection which one ought to practice for the preservation of his own honor.

[Pamphlet 11.]

OCTOBER 12, 1697.

No. 1.[286]
Bond given by Francesca Pompilia to keep her home as a prison.

Before me, etc., Francesca Pompilia, wife of Guido Franceschini of Arezzo, was placed at liberty, etc., and promised, etc., to keep to this home of Pietro (son of the former Francesco Comparini), etc., situated in Via Paolina,[292] as a safe and secure prison, and not to leave it, either by day or by night, nor to show herself at the doors or open windows, under any pretext whatsoever, etc., with the thought of having to return again to prison, etc. And after she has recovered her health to present herself at any time whatsoever, etc., at every command of the Most Illustrious and Most Reverend Lord Governor of the City; for the cause concerning which there was argument in the trial, etc., from proofs that may arise, whether new or not new; under the penalty of 300 scudi, laid by the Reverend Apostolic Chamber in the case, etc.

This is followed by the surety in due form.

NOTARY FOR THE POOR.

No. 2.[86]
Certificate of the Baptism of Francesca Pompilia.

I, the undersigned, certify, etc., as is found in the baptismal record, page 152, the particulars given below, namely:

July 23, 1680. I, Bartolomeo Mini, curate, have baptized the infant daughter born on the 17th [15] of this month to Pietro Comparini and Violante Peruzzi, who live in this parish. To her the following name was given: Francesca Camilla Vittoria Angela Pompilia,[14] etc. In pledge of which, etc.

Rome this 9th day of February, 1698.[365]

Thus it is, Pietro Ottoboni,[25] Curate of San Lorenzo in Lucina.

No. 3.
Letter of Francesca Pompilia, written in the prison of Castelnuovo to her parents.

My dear Father and Mother:

I wish to inform you that I am imprisoned here in Castelnuovo for having fled from home with a gentleman with whom you are not acquainted. But he is a relative of the Guillichini, who was at Rome, and who was to have accompanied me to Rome. As Guillichini was sick, and could not come with me, the other gentleman came and I came with him for this reason, because

[clvi] my life was not worth an hour's purchase.[250] For Guido my husband wished to kill me, because he had certain suspicions, which were not true, and on account of these he wished to murder me. I sent you word of them on purpose, but you did not believe the letters sent you were in my own hand.[249] But I declare that I finished learning how to write in Arezzo. Let me tell you that the one who carries this was moved by pity and provided me with the paper and what I needed. So as soon as you have read this letter of mine come here to Castelnuovo to give me some aid, because my husband is doing all he can against me. Therefore if you wish your daughter well, come quickly. I stop because I have no more time. May 3.[254]

Directed to Signor Pietro Comparini, my father, Via Vittoria,[66] Rome.

No. 4.
Another letter of the same person, in which she calls the Canon to task for dishonorable advances.

I give you infinite thanks for the octaves which you have sent me. All of these are the very contrary of the Rosalinda, which was as honorable as these are immodest. And I am surprised that you who are so chaste have composed and copied matters so immodest. I do not want you to do in everything as you have done in these books, the first of which was so very nice; while these octaves are quite the contrary. I can not believe that you, who were so modest, would become so bold, etc.

No. 5.
Portions of the will of Pietro Comparini.

As to each and all of my properties, etc., I appoint, as my usufructuary heir, my wife Signora Violante Peruzzi, etc. And when she dies I appoint in her stead, in the said usufruct of my entire estate, Francesca Pompilia, the wife of Signor Guido Franceschini of Arezzo. And I do so because of her good character and because for a long time, yes, for many years, I looked upon her in good faith as my daughter, and thought that Signora Violante my wife and myself were her parents. Then I found out that both she and I were tricked in that belief, thanks to the vanity of the schemes, unfortunately conceived by my said wife, to make me believe in the birth of the same daughter. And because of a scruple of conscience [101] after the marriage of Francesca [clvii] Pompilia, this fact was revealed to me by Signora Violante my wife. And this pretense of birth was found by me to be a fact because of the information of it from persons worthy of credit.[261]

All this I grant, therefore, on the condition that the said Francesca Pompilia seek again her own city and stay here in Rome, etc., in which city I hope she will live chastely and honestly, and will lead the life of a good Christian. But if she do not come back to this city, or if when she has come back she live with shameless impurity (and may God

forbid that), I wish that she be deprived of the said usufruct of my estate and that opportunity be given for a substitution in favor of the heir mentioned below, as proprietor, etc. Because thus, etc., and not otherwise, etc. And because the chance might arise that she be left a widow, or that her marriage be dissolved, since a lawsuit [260] is going on, which was brought before Monsignor Tommati [262] by the Olivieri as to her relation as child, and if the said Francesca wish to marry again, or become a nun, I am willing that she separate from my estate as much as 1,000 scudi for the purpose of remarrying or becoming a nun, if she shall so please. And I advise her not to marry again, lest she subject herself a second time to other deceptions. Still further, I give her the power to leave by will 200 scudi more of my estate. And in the event that Signor Guido die first, whereby there would come about the restitution to the said Francesca Pompilia, etc., of the money received by Signor Guido, to the sum of about 700 scudi, etc. (which I think would be at least very difficult, if not impossible, because Signor Guido is wretchedly poor and his family is very poor), I wish that these moneys be not counted against the said Francesca Pompilia in said 1,000 scudi, much less in her power of making a will, because then, etc.

October 7, 1694.

No. 6.
Authorization for the management of his affairs made by Guido Franceschini to the person of Abate Paolo, his brother.

Guido, son of the former Tommaso [48] di Franceschini of Arezzo, of his own will, etc., made and appointed, etc., to be his true, etc., representative, etc., special and general, etc., Abate Paolo Franceschini, his own brother, now living in Rome, etc., for the purpose of carrying on and defending, in the name of the said Constituent, all lawsuits and causes, civil or mixed, already brought or to be brought for any reason whatsoever, and against any persons whatsoever, anywhere, and especially in Rome, whether as plaintiff or defendant [clviii], before any judge, either ecclesiastical or secular, whether before the Congregation or Tribunal, and before one or both, to give or receive charges, or to contest lawsuits, to take oath as regards the calumny, and to furnish whatever other testimony is lawful, etc., and to carry on and obtain each and all other necessary matters, in the same manner and form as the Constituent could, if he were present, and as seems well pleasing to the said Procurator, etc., promising, etc., and demanding, etc.

I, Joseph, etc., de Ricii, Notary Public, etc., of Arezzo was asked, etc., in pledge whereto, etc.

[File-title of Pamphlet 11.]

By the Most Illustrious and Most Reverend Lord Governor of the City in Criminal Cases:

Roman Murder-case, with qualifying circumstance.

For the Fisc, against Count Guido Franceschini and his Associates.

Summary.

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

[clix] # Romana Excidii.

[Pamphlet 12.]

Most Illustrious and Most Reverend Lord:

Why should we waste time in disputing the point whether adultery committed by Francesca Comparini with Canon Caponsacchi, as is claimed by the other side, is sufficiently proved? For in our first information [Pamphlet 5] as to the law and fact in the case, we have already declared that judgment was given in the *Congregation* only for the penalty of banishment [271] to Civita Vecchia against the abovesaid Canon, and of retention in the nunnery [276] against Francesca, because of the very lack of proof [273] of the said adultery. And this is quite right in law, because neither the Canon himself nor the said Francesca have confessed, much less been convicted of it; and because the suppositions brought on the other side are trivial and equivocal. But, even if these latter had been weighty and very urgent, they would not have been enough to establish conclusive proof, but at the most could only lead the mind of the judge to place some minor punishment upon them arbitrarily, as Farinacci testifies. [Citation.]

Therefore there should be strict insistence on behalf of the Fisc upon the point that Guido Franceschini had not the right to kill, after an interval, his wife, whom he had not taken in adultery nor in base conduct, without incurring the ordinary penalty of the *Lex Cornelia de Sicariis*. For in our former writings, § *Alii vero* [cf. p. lxiii] we have proved by the strength of many distinguished authorities that a husband who kills his wife after an interval is not excused from the said penalty.

Now that this fundamental assertion [in their argument] is overthrown, we declare that the rights of the Fisc can not at all be controverted in the case with which we are dealing, since the authorities alleged by the Defense, who excuse a husband from the ordinary penalty, speak in the case of simple murder; and they ought not, accordingly, to be extended to a case made still graver by qualifying attendant circumstances. And for this reason, because the penalty can not possibly be the same, when the crime is greater in the one case than in the other. [Citations.]

Nor for the purpose of overthrowing this fundamental idea of the Fisc can the objection be made that all the qualifying and attendant circumstances, which have been brought together in behalf of the Fisc [clx] should have no consideration, because they tend toward and are preordained for the end had in mind; for the end and intention of Count Guido was directed toward the murder of his wife and the vindication of his honor. But one can well understand how fallacious

this argument really is, from what I have already written in § *Prima enim* [cf. p. lxiv] together with the one following, and § *secunda qualitas* [cf. p. lxv] and *si ergo* [cf. p. lxv]. There we have proved that the learned authorities who can be adduced by the other side speak and should be so understood when the end is licit and not prohibited by law, or else when some qualifying circumstance, through the force of particular Constitutions or Banns, does not establish some further capital crime, distinct and separate. And this is true whether the preordained end in the mind of the delinquent follow or do not follow.

But in our case, from what has been conceded by the lawyers for the Defense, the husband is not permitted by law to kill with impunity his wife, after an interval, for adultery. But he is permitted by law to slay the vile adulterer and his adulterous wife only when taken in adultery. How then can these authorities be applied to our case? For they hold good and find a place for themselves only in a case permitted by law. In these circumstances speaks Laurentius Matthæus [Citation], who is cited by the other side, where in his setting forth a case we may read: "The adulterer and adulteress were slain in the home of the husband, although in that case the husband did not escape unpunished, because he had used firearms."

Nor does it hold good in law and practice that the bearing of arms [413] is included along with the crime committed. Not in law, as we have affirmed in our other argument § *si ergo* [cf. p. lxv]; nor in practice, because in all the tribunals of the entire Ecclesiastical State, it is held that even when murder in a rage has been committed, if it has been committed with the arms which are prohibited under the capital penalty, especially if these arms come into the possession of the Court, a more severe penalty is inflicted. And murders which should suffer a lighter penalty because they were done in anger are condemned under the ordinary penalty because of the carrying of such arms. Farinacci and Guazzini testify that this has been the practice in the Ecclesiastic State while this Decree has held good. [Citations.]

Still less applicable are the other authorities, who were adduced to escape the order of the Constitution of Alexander. For although **[clxi]** it is true that for this crime the penalty threatened by the same decree does not enter, unless these three matters are concurrently present, namely craft, the occasion of a lawsuit, and the fact that no provocation has arisen (as Farinacci holds [Citation]), yet in our case, all of the abovesaid concur. As to the craft, there can be little doubt, since by the very confession of the Defendants we have knowledge of the preceding discussion and deliberation for committing the murders. And Decian and others affirm the charge of craft may arise from such a discussion. [Citations.]

The presence of a lawsuit [421] is likewise undoubted; because, on the representation of Pietro Comparini, suit [260] was not only brought before A. C. Tommati [262] as to the dowry promised and the goods subject to entail, for the exclusion of the said Guido Franceschini and Francesca his wife, but also a sentence favorable [263] to the said Franceschini has been handed down by the same judge.

But still further we may gather, from the confession of Franceschini himself, that the provocation whereby he was moved to kill his wife arose because of the pretended adultery; on this point the counsel for the defense have principally insisted. Nor can they deny that this same cause was introduced in the criminal prosecution in the presence of the judge by the same Franceschini. It is quite necessary, then, to acknowledge that this ought to justify the application of the penalty of the Alexandrian Bull; for this decree speaks in a civil as well as criminal cases, as is evident in the fourth paragraph of the same Bull, where we read: " That successively in future times forever, each and all persons, ecclesiastical and secular, of whatever quality, dignity, state and grade of rank and prominence, in their own causes philanthropic or profane, also in criminal and mixed cases, whether now before this Court or pending for the time, their adversaries, or those following or helping them, or the advocates or counsel of them." And also in the place where we read: " If mutilation of limb, or death (which God avert) follow, they incur *ipso facto* beside the loss of their right and case, the sentence for the outraged majesty of the Law."

We believe we have sufficiently canvassed these matters with galloping pen because of the shortness of the time of merely three hours, to prove clearly that [clxii] the foundations of the Fisc affirmed in our former writings still stand fast, in spite of what has been recently deduced by the opposition so fully and so learnedly, but without legitimate proof.

F. Gambi,
Procurator General of the Fisc
and of the Reverend Apostolic Chamber.

[File-title of Pamphlet 12.]

By the Most Illustrious and Most Reverend Lord Governor of the City in Criminal Cases:

For the Fisc, against Count Guido Franceschini and his Associates, Prisoners.

Response of The Lord Procurator General of the Fisc.

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

Romana Homicidiorum.

[Pamphlet 13.]

Most Illustrious and Most Reverend Lord:

In the beginning of his recent information [cf. p. cxxv], my Lord Advocate of the Poor has criticized as unjust the decree of this Supreme Tribunal, which inflicted the torture of the vigil [526] upon Count Guido Franceschini and his associates, for the purpose of getting confession of that most horrible crime committed by them. Hence he claims that those confessions, given under the fear of it and ratified after it was over (as is the custom), can not do the Accused any harm. He attempts, indeed, to deny the justice of the said decree, not merely because of the absence of the quality of special atrocity (as required by the decree of Paul V of sacred memory for the reformation of the tribunals of the City), but also from the fact that the death penalty can not be demanded for the crime under discussion. And this he claims is so (in spite of the unusual powers for ordering the torture of the vigil granted to this Tribunal) lest there may be greater harshness in the course of the trial than in the penalty itself. [Citation.]

In the end of this said recent information [cf. p. cxxxviii], he also criticizes me [425] because, to the very great wonder of himself and others, I have failed in my duty of seeking the truth in that I have made certain allegations in the defense of the rights of the Fisc, which I have not communicated to him. I thought he had complained quite enough about that orally, so that he might have spared us his new complaint. But it was not my duty to tell them to him, just as his informations, which he made for the Defense (very learned indeed in their way), have never been made known to me by him. But I assert only this, that I have paid the price of much labor, lest I may seem to have failed in my office and in the reverence with which I attend upon my Lord.

Passing over, therefore, my own personal apology, I go on to vindicate the decree of this Tribunal from the injustice charged against it. I also omit proof of the quality of the crime as to whether it may be considered very atrocious for I have abundantly argued this point in my past response, § *Sed quatenus etiam* [cf. p. lxxvi], with the one following. For I showed that this quality could be sustained because of the attendant circumstances which exasperated and raised the crime to the outraging of the majesty of the law,[420] according to the provisions of the Apostolic Constitutions and the General Banns. I think it is quite enough in my present argument to show that for this offense the death penalty **[clxiv]** should be demanded. I hope to accomplish this with little difficulty, since from the very kind of severe torture decreed, by

judges of such integrity, the applicability of this said penalty is presupposed. And so since nothing new, whether in fact or in law, can be brought, which has not been already examined in relation to the cause for decreeing the torture, now that the confession of the Accused has followed, it is the duty of the Judges to pronounce the execution of the well-deserved penalty, which has been long expected by everyone.

I have said that nothing new is brought by the defense, since their special attempt consists in repeating the plea of injured honor because of the pretended adultery committed by the wife of Guido, with the help and conspiracy of her parents, who were barbarously slaughtered along with her. This plea is offered for the purpose of exciting the pity of my Most Illustrious Lord, and the Lords Judges, in order that Guido and his associates may be punished more mildly, according to the authorities adduced on that point in their first information § *hoc stante* [cf. p. xxv] together with the one following, and § *Prædictis nullatenus* [cf. p. xxxii], likewise with the one following; and in the present information, § *Verum & socios* [cf. p. cxxvi]. But the same response recurs that for the Accused this exception on the plea of pretended injury to honor can afford no refuge, because this plea has no foundation in fact and is irrelevant in law.

For what difference does it make even if the mere strong suspicion of adultery is enough to excuse vengeance taken immediately by a husband against his wife or her lover? If she were found either in lustful acts, or in those preparatory thereto, then because of such a sudden grievance excited thereby, which provokes a man to anger, the penalty should very often be tempered according to the nature of the case and the persons. But it is quite certain that to escape the ordinary penalty of the *Lex Cornelia de Sicariis* for the murder of a wife committed after an interval, the mere suspicion of adultery, however strong, is not enough; but the clearest proof of it is required, either from the confession of the wife herself or from a condemnatory sentence following. [Citations.]

But such proof is entirely lacking in our case. For the luckless wife constantly denied the adultery even till the last breath of her life, as is evident from the sworn attestations of **[clxv]** priests and others [352] who gladly ministered to her after she had been wounded. For they unanimously assert that she always affirmed that she had never violated her conjugal faith.[355] Nor did she ask that such sin be forgiven her by the Divine Clemency;[356] this assertion indeed should have much weight, since no one is presumed to die unmindful of his eternal safety.[362] [Citations.]

Nor are the responses given by the Defense at all relevant; namely that such proof in denial of the adultery is drawn entirely from testimony taken out of court, and extorted by the heir [363] while a lawsuit was

pending, to remove the annoyances brought by the Monastery of the Convertites,[364] and that some of the undersigned were legatees. They also respond that since such an assertion as hers served to cover her own baseness, it should not be believed, especially as it was not sworn. And further, that although no one is presumed to be unmindful of his eternal safety, yet all are not supposed to be immune from sin, like Saint John the Baptist, which is especially true when the argument is about the prejudice of a third party [534] and about the more severe punishment of an enemy of the one making declaration.

Now that all these claims are destroyed with so little trouble, the irregularity of the proof could stand in our way, if the Fisc were obliged to assume proof and perfect it. But the burden of proof rests upon the Accused, according to the authorities cited above for avoiding the death penalty, whenever a man kills his wife after an interval. The above attestations are brought merely to damage the proof of pretended adultery, offered by Guido. In this case, certainly, such attestations are not to be spurned, especially when we consider the quality of the persons attesting, since they are priests of well-known probity, and it is incredible that they would be willing to lie. [Citations.]

The further objection that these attestations were extorted by the heir, while a lawsuit was pending, for the purpose of escaping the trouble brought upon him by the Monastery of the Convertites, is also removed by the same reply; because when one is arguing for the proof of an assertion given in the last days of life and in the very face of death, [clxvi] proof can not be established, unless this hold good. And the heir is praiseworthy, because he is obliged to avenge the murder of the one slain, lest he be considered unworthy according to the text [Citation]: " Heirs who are proved to let the murder of the testator go unavenged are compelled to give back the entire property," etc. He procured these attestations that he might guard the good fame of the testatrix; and this was rather because of his zeal for her good repute than to prevent the annoyances unjustly brought, and the quashing of these latter could be turned back for the exclusion of the pretended proof of the dishonesty of the unfortunate wife.

Still less can it stand in our way that some of the signers are legatees, since their interest is not large enough to prevent their giving testimony. [Citations.] And this is especially true when one is arguing to prove a matter which happened within the walls of a home, and the proof of which, on that account, is considered difficult. [Citations.] And such an exception to their testimony, so far as it has any foundation, is utterly removed by the number of the witnesses subscribed to the said attestations. [Citations.]

But [last of all], as to the objection that the assertion of one dying is not to be attended, when directed toward the exoneration of one's

self, because no one is compelled to reveal his own baseness: This might indeed hold good if the adultery had been proved, and if it were not evident that, though wounded, she had died with strongest manifestation of Christian tenderness, which would exclude all suspicion of a lie. In this case such an objection does not hold good, but another very valid supposition takes its place, namely, that no one is believed to be willing to die unmindful of his eternal safety. [Citations.]

For Mascardus [Citation] **[clxvii]** says that a confession given in the hour of death holds good, and he adds that this approaches nearer the truth, and cites in proof of it Marsilius. [Citation.] The latter affirms that if anyone assert that a person making oath in the hour of death is lying, he says what is improbable. And Mascardus concludes that this opinion is more just, and more in accord with reason and with natural law. And though he offers some limitations, none of these are applicable to our case; and the question about which he was arguing was concerning the assertion of one wounded, as to whether such assertion constituted proof against the one charged; and this differs by the whole heaven from our dispute, if we only note that the burden of proof does not rest with the Fisc. Nor does the assertion of Pompilia when dying tend principally toward vengeance,[361] since it is quite evident from those making attestations that she shrank with horror from that, as she always professed that she most freely pardoned her husband.[359]

These matters we have noted beforehand rather in superabundance than because we were obliged to assert the justice of the decree of this Tribunal. It will now be easy to escape the proof of pretended adultery, brought by the counsel for the Defense. For so far as this proof is drawn from the other decree of this same Tribunal, condemning Canon Caponsacchi for flight and carnal knowledge with Francesca Pompilia,[271] the response [519] which has already been given holds good: namely, that a title should be given no attention,[274] but merely the proof resulting from the trial, and the penalty imposed by the sentence. And what if in that decree, along with the " title " of " complicity in the flight and escape of Francesca Pompilia," there was also added the title " for criminal knowledge of the same "? Yet since in the trial itself no proof [273] in verification of this was found, and since the penalty of three years' banishment, does not correspond therewith,[272] the mere title should not be given attention, according to the authorities adduced in my past response, § *non relevante*. [Cf. p. cxcv.]

And on account of the following reason, still less can such clear proof of the pretended adultery be established as is required to escape the ordinary penalty for taking vengeance after an interval. For at the instance of the Procurator of the Poor a correction was decreed by the Judges, with the approval of my Most Illustrious Lord, which substituted a general title relative to that suit, namely *Pro causa de qua in*

actis; and although this correction is not to be read in the record (commonly called the *Vachetta*) in which decisions are usually noted, **[clxviii]** yet it was made in the order for the dispatching of Caponsacchi to his exile and in the decree assigning to Pompilia the home as a prison. (Summary, No. 1.) [Cf. p. clv.] And since the latter was made with the consent of Abate Paolo Franceschini,[288] we may assert that the said change of title became known to him because of his notorious solicitude in conducting the case; and so it would be very improbable that he had not carefully examined such a decree and the obligation made by Pietro to furnish her food,[287] without hope of repayment, and the bond given for her to keep the home as a prison. For these reasons his knowledge of that change should be considered as sufficiently proved. [Citations.]

And therefore the response falls to the ground that the decree could not be changed unless both sides were given a hearing. For while Francesca Pompilia, whose defense had not yet been finished, was unheard, much less could the title of criminal knowledge be included in the condemnation of the Canon. For this would be injurious to her, not merely as regards her reputation, but also for the loss of her dowry, for which her husband was especially greedy.[46] For in this way would an undefended woman suffer condemnation, and what is worse, as the event shows, would be exposed to the fury of her husband. And hence with justice was this correction requested and made. And even if this had not happened, a sentence given against the Canon could not injure her, as it was a matter done with regard to other parties. [Citations.]

But it is quite gratuitous to assert that a change as regards the matter of the trial does also impart the same change as to the expression of the title of carnal knowledge. For since several titles were originally expressed in the decree of condemnation (such as complicity in flight, running away, and carnal knowledge, upon which the suit was based) the statement of the cause contained therein is no more probable as regards one than as regards another, and certainly it is not probable as regards them all. For if they had wished to include all those in the modified decree, they would have said: *Pro causis de quibus in Processu,* for the singular number does not agree with several causes. [Citations.] **[clxix]** But in the prosecution the charge of " criminal knowledge " was not proved and the Canon could not be condemned for that while Francesca Pompilia was unheard and undefended. This is on account of the indivisibility of the crime of adultery, which does not permit the division of the case for the purpose of condemning the one, while the case is pending as regards the other. And this is especially true when all parties are present and held in prison. [Citations.] The expression, therefore, *Causæ, de qua in Processu,* should be understood to apply only to the complicity in flight and running away

(for this could be issued without the condemnation of Francesca Pompilia), and not to apply to "carnal knowledge." For the statement made should be considered applicable only to those matters with which the judgment relative thereto agrees. [Citations.]

And this claim of ours is rendered manifest by the mildness of the penalty [272] to which the Canon was condemned, namely, that of three years' banishment. This certainly does not correspond with the offenses of running away with a married woman from her husband's home, bringing her to the City, and carnal knowledge of her. For inasmuch as the attendant circumstance of rape, spoken about, is punishable by the capital penalty, unless a priest is being dealt with, a far severer penalty would have to be inflicted for the adultery alone, if proof thereof had resulted from the trial. [Citations.]

My Lord Advocate of the Poor acknowledges that the penalty was too light [272] to expiate harshly such a crime, and especially in accordance with the Constitution of Sixtus, revived by Innocent XI, of sacred memory. And therefore to avoid acknowledging the lack of proof, which might very well be inferred from the lightness of the penalty, he attempts to respond that the said Canon was dealt with more mildly because he was a foreigner and because the crime under consideration had been committed outside of the Ecclesiastical State. **[clxx]** In this case one should be dismissed merely with exile. But this response is proved to be without foundation for many reasons.

First, because on account of the well-known privilege of the City of Rome, which is the country of all men, even those may be punished here who have committed crime outside of the Ecclesiastical State, which is subject to the secular authority of the Pope. And this is true, not merely for the handling of criminals, which is permitted to any Prince, but for the trial of the crimes. [Citations.] Cyrill testifies that he himself had so held in 1540, in the Capitolian Court, and Farinacci testifies that it was so held in this same Court in the year 1580, in the case of Gregorio Corso, who had been condemned to the galleys, because he had committed murder in Florence and had come here to Rome, after seizing the horse of the one he had slain. And this was notwithstanding the fact that the cause was very sharply defended for the accused. [Citations.]

Second, because this authority holds good whenever there is argument for punishing crimes committed by churchmen, who are subject to the jurisdiction of the Supreme Pontiff, and in the City can be punished for their crimes with the ordinary penalty, even though the crimes were committed outside of the temporal authority of the Pope. [Citations.] "Rome is a common country and, therefore, in the Roman courts any cleric or layman may be brought to trial, even though he did not commit his crime there." [Citation.]

Third, because inasmuch as it was claimed that the approach to the City and the carrying away of the wife to the same were done because of lust, and to secure greater liberty for knowing her carnally, by taking her from the home of her husband, so the Canon, on account of this purpose, would have subjected himself to penalties such as could really expiate the crime, and which also might be inflicted here in the City; for one is punishable with the same penalty who continues in a crime here, although he put it into effect outside of the State. [Citations.] Caballus [Citation] holds that, for deciding the jurisdiction of a judge over crimes that have been committed, the person offending, rather than the offense, should be considered. [Citation.]

Fourth, because the pretended carnal knowledge, so far as it **[clxxi]** can be said to be proved in the prosecution (and it can be verified that the decree was changed with relation to that), happened in the Ecclesiastical State; for the strongest proof of that crime was drawn from the asserted sleeping [215] together in the same bedroom at the inn of Castelnuovo. [Citation.] And therefore the Canon could and should have been punished with condign punishment, not merely for his undertaking, but for the adultery, if that had been proved. And since this was not imposed, it may well be asserted that the Canon was not at all condemned for "criminal knowledge," unless one wishes to criticize as unjust that decree, which imposed a mild penalty and one suitable merely to simple running away and complicity in flight, and which was much tempered because of the excuse brought by the Procurator of the Poor. Therefore it may be asserted that the Canon was not condemned for the pretended criminal knowledge, since the nature of the penalty well proves the nature of the crime, with which it should be commensurate, according to Deuteronomy 25: "According to the measure of one's sin shall be the manner of his stripes." [Citations.]

And therefore, since the pretended condemnation of Canon Caponsacchi for criminal knowledge of Francesca Pompilia is excluded, the pretended notoriousness of the adultery resulting therefrom also falls to the ground. Neither can this notoriousness be alleged against her undefended. And just as public vengeance, which is to be decreed by a judge, can not be based lawfully upon it, so much less should private vengeance be considered excusable, when taken by the husband in murdering her after an interval. He is immune from the ordinary penalty for murder even according to the more merciful opinion only when the adultery is established by the very clearest proofs displayed in confession by the accused, or by a sentence given thereupon.

Likewise it would be superfluous to avoid the presumptions adduced by the Defense, especially by the Procurator of the Poor, to destroy the proof of adultery drawn therefrom; for this single response would be enough, namely, that these proofs were all gathered together in the

prosecution for Pompilia's flight made at the instance of Count Guido, he pressing hard to gain the dowry [46] because of her adultery. And this was insisted on by the counsel for the Fisc, who wrote acutely upon these matters at that time. And yet, in the report of the cause these presumptions were not considered by the judges because of their irrelevance. This is evident from the lightness of the penalty [272] decreed against the Canon. **[clxxii]** And so the examination of these can not be renewed after the Fisc has yielded and quietly acquiesced in the sentence, from which it could appeal if it considered itself wronged. Nor could Guido legitimately have recourse to such awful vengeance by his own hand. But lest some feature of the case may be left untouched, and that the justice of the decree may be more clearly asserted, I have taken the pains to confute these briefly.

And since, in the first place, the cause of flight is considered by the Defense in order that they may prove that the said flight was entirely illicit and was planned for easier criminal knowledge, the proofs brought for this purpose should be examined. The chief of these was drawn from the asserted letter of Francesca Pompilia,[112] written to Abate Franceschini. This makes pretense that her parents urged her to poison her husband, her brother, and her mother-in-law, to burn the home, and to return to the City with her lover. But one can not have a better refutation of this than the very tenor of that letter,[112] including matters that are so improbable, yes and indeed incredible, that it was rightly rejected by the judges. For who can be found so destitute and ignorant of filial love and duty as to make himself believe that a mere child, not more than fourteen years old [Citation], married away from her father's home, grieving bitterly for the departure of her parents, and wretchedly kept in the home of her husband, so that she was obliged to have recourse to ecclesiastic and laic authorities,[135] [139] could have written to her husband's brother (who was so unfeeling toward them), with a calm mind, of such base counsels and commands given by them, unless, as she ingenuously confesses, she was compelled by her husband to write it? [114] Nor could she, without great peril, refuse her husband, who was demanding this. Such an improbability alone is enough to thrill with horror those reading it, and well shows that she had written this not of her own accord, but under compulsion. [Citations.]

And, therefore, there is no need to examine whether the qualification added to her confession is probable,[459] [464] namely, that her husband had first marked the letters of the said epistle,[114] which she had afterward inked by tracing them with a pen; because she did not know how to write.[235] For possibly she shuddered to confess that she had written such matters, even under compulsion of fear **[clxxiii]**, to the injury of her father and mother. Such fear is quite presumable in a wretched

wife of tender age, destitute of all help, away from her father's hearth and in her husband's home. [Citations.] Mogolon says that from the absence of relatives, the presumption of such fear may arise. [Citation.] And this is especially true after she had had recourse in vain to the authorities.[135] [139] Nor is a sufficient proof to the contrary deducible from Francesca's signature to the matrimonial contract, and from the letters that were said to have been written and sent by her in succession to the Canon, or else thrown from the window. [Citation.] For the very brief signature made in the marriage agreement does not show such skill in writing that with the same ease she could have written so long a letter, inasmuch as daily experience teaches that many are found who can scarcely write their own names.

Still less can the ability to write be said to be proved by the asserted love letters; for these were constantly denied by Pompilia. Nor can these letters be said to be sufficiently verified by the assertion of the said witness for the Fisc,[54] namely, that she threw from the window a note, which the Canon picked up and then departed. For aside from the fact that the witness stands alone and is of the basest condition, namely a dishonest harlot,[171] and so unsuited for proving a matter [Citations], she neither affirms, nor can affirm, that the said letter was written by Francesca Pompilia. Likewise the letters found in the prison of Castelnuovo [231] might have been written by some stranger's hand. And even though they had been written by her, inasmuch as they are of a later date, they do not prove her skill in writing at some past time; for she could have acquired this skill afterward [248] because of desperation which sharpened her wits, for the purpose of inducing the Canon to undertake the flight with her, so that she might escape the peril of imminent death. For in such matters as these, which are variable and can be changed, one can not well argue from the present to the past. [Citations.] And that in fact she did learn to write in Arezzo after the departure of her parents **[clxxiv]** is evident from her letter [19] written in the prison of Castelnuovo, and found among her private papers after her death. This is given in the present Summary, No. 3. [Cf. p. clvi.]

The proofs of the abovesaid letter [to Abate Franceschini] drawn from the letters of the Governor of Arezzo, of the Reverend Bishop,[142] and of Bartolomeo Albergotti, are so far from excluding the legitimate reason for flight given by herself and the Canon, during the prosecution, that they rather favor it. For although they criticized her for having such ill-advised recourse to them, they possibly did this to free themselves from censure for having thoughtlessly turned her away.[139] Therefore it is more probable that by them the minds of her cruel husband and of her mother-in-law, who was pitiless and implacable.[49] as experience teaches us, were exasperated all the more. Any one

may well know that Guido's mind was much more embittered after the lawsuit brought concerning the pretense of birth and the rescinding of the dowry contract,[260] and after the publication of pamphlets [109] about the domestic scantiness and the base treatment which they had suffered in the home of the couple in Arezzo. His anger was also stirred by his jealous suspicion of the Canon (although Pompilia's love of the latter was merely pretended for the purpose of winning him) and by his exasperation, that increases the deadly hatred, which arises from a lawsuit about a considerable amount, and much more about an entire property. [Citations.] Such should the controversy about the pretense of birth be considered. Nor can the just fear of the luckless wife as to her deadly peril be denied. And driven to desperation in avoiding this, she might well have fled; for if it is permissible because of blows beyond mere legitimate correction [Citations] how much more permissible should it be considered, when the wife was continually afraid that he would kill her either with the sword [134] or by means of poison.[133] And, to avoid this, it was but prudent counsel for her to leave her husband and go back to her father's hearth.

It would indeed have been better if she had won her security by having recourse to the Right Reverend Bishop, in order that he might place her in some nunnery or with some honest matron; or to the Lord Governor, who would have considered her safety and the honor of her husband's family; or if she had fled in the company of someone connected with the household.[148] **[clxxv]** But the fear of imminent peril does not permit one to take better counsel, and especially a wretched wife of tender age, destitute of all aid and exposed to the fury of her husband and her mother-in-law. And still further, she might well fear that new recourse to them would be in vain, since she had found the former so useless. Nor could she find any better way of fleeing safely, wherein she thought lay the sole help for herself, than by using the help and company of the Canon, who had been proposed to her for this purpose by the Canon Conti [35] and by Signor Gregorio Guillichini,[146] relatives of her husband. It is incredible that they would have conspired against Guido's honor without the strongest and most urgent reason and without confidence in Caponsacchi's honesty and modesty. For one of them, namely Gregorio,[146] had offered himself as a companion for the journey and would have carried out his offer if his infirmity had permitted; as we read in the said letter [19] of Francesca Pompilia found since her death and shown in our present Summary, No. 3 [cf. pp. clv-clvi], which refers to the same causes, of the infirmity of Gregorio and the imminent peril, which did not permit her to await his convalescence. And therefore she is worthy of excuse since she fled for dire necessity in company of the Canon, a man of modesty well known by her (as is likewise evident from another letter in the Summary of

our opponents, No. 7, letter 12, in which she calls him the chaste Joseph, and from the other letter, in which she commends him for his sense of shame). For if she chose this remedy under dire necessity, she should be excused according to the common axiom, " necessity knows no law." [Citations.]

Nor is an illegitimate cause of flight to be inferred because of the dishonest love with which Francesca Pompilia pursued the Canon in some of these letters.[232] [247] For although they seem amatory, yet they were ordained to the purpose of alluring this same Canon, in order that he might flee with her; since, without him, she knew that she could neither carry that out, nor even attempt it. Hence the letters can afford no proof of subsequent adultery. For although proof may result from love letters, according to the authorities adduced by the Defense in § *His praehibitis* [cf. p. cix], yet this is avoided **[clxxvi]**, if the letters are directed to a permissible end, such as flight to escape deadly peril. For then, inasmuch as the end is permissible, the means are likewise so considered, even though these are not without suspicion; for they are not considered in themselves, but because of their end. [Citations.] Nor is the proof of adultery hitherto drawn from love letters so very strong unless they include the implicit confession of subsequent fornication. [Citations.]

The following consideration is especially urgent in leading to the belief that the luckless girl thought the Canon would conduct himself modestly during the journey. For in one of her letters she does not fail to take him to task (who had elsewhere been commended for honesty and modesty) because he had sent her questionable verses [253] (present Summary, No. 4) [cf. p. clvi]: " I am surprised that you, who are so chaste, have composed and copied matters so immodest." And further on: " I do not want you to do in everything as you have done in these books; the first of them was so very nice, but these other octaves are quite the contrary. I can not believe that you, who were so honorable, would become so bold." From this sincere rebuke it is quite evident in what spirit these letters were written, even though they are filled with blandishments and proofs of love; for she shrank even from the dishonorable verses sent to her. Hence the letters should be understood according to the intention of the one writing them, just as one's words are. [Citations.]

And should not the supposition that the unfortunate wife had destroyed her matronly shame in the journey be therefore considered trivial and improbable? For she had quite enough to do to provide for her own safety by headlong flight. Nor is it probable that she was tempted by the Canon, since the love between them is proved merely by the said letters [247] which were preparing for the flight. And these letters show her solicitude for his modesty and continence, since for the

mere sending of them she had made such complaint. For she feared lest he might become too bold, as is evident from details of the letter cited above. Nor are examples lacking of continence observed during a longer and easier journey, which had been undertaken **[clxxvii]** and completed by lovers, even though they might lawfully have indulged their love. Hence it is not improbable that the wretched girl kept herself scrupulously within bounds; for she was in deadly peril, which she hoped to avoid by precipitate flight.

The other proofs of this pretended adultery are far weaker, and were rightly ignored in the report of the case, both as regards the flight and as regards the decreeing of torment; for mutual love between her and the Canon can not be said to be sufficiently proved by the abovesaid letters; for they were preparatory to this prearranged flight.

The entry and egress [170] to and from the home of Francesca by night is proved by a single base witness.[171] Nor should even such entry be considered to be for a bad end, since it was in preparation for the flight. For when we have a permissible cause given, to which a matter may be referred, it should not be attributed to one that is illegitimate and criminal. [Citation.]

To this reason also should be referred her readiness in showing herself at the window by day and night at the hiss [173] which gave signal that her pretended lover was passing. For since her love might be a mere matter of pretense for the purpose of winning him to give her help in the flight by affording her his company in the journey, these marks of love can be of no further import than the pretended love itself. The unfortunate wife employed it as a stratagem, indeed, that she might provide for her own safety. And so this response recurs: " If the end is lawful,[516] the means ordered toward carrying it out can not be condemned."

The pretended insidious manner of preparing for the flight and putting it into execution by means of an opiate [196] administered to her husband and the servants (so far as it is proved and it was by no means proved in the Prosecution) affords indeed a proof of her flight, but not of adultery; for it was prearranged,[197] not for that purpose, but to escape deadly peril, to which the wife would have exposed herself, all too foolishly, unless she had made sure that her husband, who was lying in bed with her, was sound asleep, or unless she had contrived some such easy way.

The ardor shown in some of the letters [247] is indeed a sign of love, according to the word of the Poet: " Love is a thing full of solicitous fear." [Ovid, Heroides I, 12.] But since love was pretended for a legitimate end [252] (as was said) **[clxxviii]** she could also make a show of ardor for feigning love, since it tended toward the same end of winning his good will, so that possessed of his true service she might

escape. Therefore, from this pretended love and these feigned signs of love, one can not argue that their departure together from the home of the husband and their association during a long journey gives proof of the pretended adultery; because even in true and mutual love continence has been observed, which is certainly more difficult.

Nor are the authorities adduced by the Defense in § *Accedit quod* [cf. p. cx] applicable; because that text has regard to a woman spending the night outside of her husband's home and against his will, without just and probable cause, as is evident from the words of the same. This decision is not applicable to our case, since the wretched Pompilia left her husband's home and went to her father's hearth that she might escape the deadly peril which she feared was threatening her. And so, since she did it for just and probable reason, the condemnation of the aforesaid text is turned away. And Farinacci so explains the assertion. [Citations.] " But it is otherwise if done for reason, because the mere spending of the night together does not of itself prove vice; for a case can be given where a wife spent the night with men, and yet did not break her marriage vow." [Citation.] Since this possibility is verified in our own case also, the proof of subsequent adultery can not be inferred from her flight and association with him in the journey, for the purpose of providing for her own safety.

Their mutual kissing on the journey,[206] so far as it is proved, affords no light presumption of violated shame; but the proof of it is too uncertain; for it rests upon the word of a single base witness, who swears to matters that are quite improbable, namely that, while he was driving their carriage very rapidly, he saw Francesca Pompilia and the Canon kissing one another. How full of animus this deposition really may be is evident from this fact—that during the night he saw a momentary and fleeting deed, without giving any reason for his knowledge, such as that the moon was shining or that some artificial light afforded him the opportunity to see it. [Citations.] [clxxix] The improbability, or rather incredibility, is increased because, while the witness was intent on driving the carriage with such great speed as to seem like flying (as another witness testifies), how could he look backward and see their mutual kissing? Such an improbability would take away belief not merely from a single witness, but from many of them. [Citation.] Furthermore, there is the possibility [209] to be considered that the jostling together of those sitting in the carriage might have happened from the high speed; and from this fact an overcurious witness might believe that they were kissing each other, although in fact the nearness of their heads and faces to one another might indeed be by mere chance, and not for the purpose of shameful and lustful kisses. Because whenever an act may be presumed to be for either a good or a bad end, the presumption of the evil end is always excluded. [Citations.] And so in the

said report of the prosecution for flight, this presumption was justly passed over because of lack of proof; nor would it have been rejected otherwise.

Nor can this improbable and prejudiced deposition of the said witness receive any support from the pretended letters,[247] in which Francesca thanks him for the kisses sent, which she says would be dearer to her if they had been given by the Canon himself, and sends him back ten hundred thousand times as many. For it can not be thence inferred that if the opportunity were given their mutual kissing would follow, since these words were offered as serviceable and alluring for the purpose of winning him over; nor do they involve an obligation. [Citations.] And therefore they do not lead one to infer that they were carried out, especially since Francesca many and many a time warned the Canon to observe due modesty. And when she found that he had transgressed its limits by sending her dishonorable verses she abjured him not to become bold in urging his passion. This is far removed from impure desire to receive his kisses, which is formally stated in the said letter, as it is without any thought of injuring her matronly honor.

The use also of laic garb,[217] in which the Canon was found clothed, [clxxx] can afford no proof, because, as he is no priest, he can not be said to be forbidden to do so on a journey. And this was probably arranged in good faith to conceal himself and to avert scandal, which might be conceived at seeing a priest with a woman in the flower of her age [16] and, as I have heard, of no small reputation for beauty, journeying without the company of another woman or servant. [Citation.] And so the authority of Matthæus Sanzius, etc., is not applicable, because in his case there was no concurrent cause on account of which the priest might approach with improper clothes and girded with arms; and he was found by the husband, either in the very act or in preparation thereto, and was killed on the spot. In such a case the proofs of adultery may well be admitted for the purpose of diminishing the penalty, and they were gathered by the same author to that end.

Their sleeping together [215] on the same bed, or at least in the same bedroom, at the inn of Castelnuovo, was not given consideration in the report of the prosecution for flight, because of defect of proof. This charge was indeed denied by Francesca Pompilia, and the Canon frankly confessed merely that he had rested for a little while on another bed in the same room. Nor ought a brief stay in that room be magnified to a crime, since it should be attributed to his guardianship [214] of the said Francesca, whom he was accompanying on the journey, and hence was under obligation to guard [214] her lest some evil might befall her. Whenever an act may be said to be done for a good purpose all suspicion of evil ceases. In these very circumstances Cravetta [Citation] says that the interpretation should tend toward lenience, even though the

harsher interpretation seems the more probable. Nor does it suffice as a full proof of adultery [174] (if one is arguing a criminal case) that a young man be seen alone and naked with her, and that he be found locked in the bedroom with the wife, even though he have his shoes and clothing off; because these matters may be merely preparatory. And much less can proof of adultery arise from his brief stay in the same bedroom for the purpose of protecting her.[214]

Nor can proof of their having slept together be drawn from the deposition of the servant of the same inn who asserted that he had been ordered to prepare only a single bed. For it does not **[clxxxi]** follow from this that both of them slept in it; but this was done because only Pompilia wished to rest a little while to refresh her strength,[218] which had been exhausted by the swiftness of the journey they had made. The Canon was keeping guard over her [214] and preparing for the continuance of the journey; and so, when the husband arrived, he was attending to this by ordering that the carriage be made ready.[219] Hence no proof of their having slept together [215] can result from this deposition, and it was justly rejected by the judges, so that it needs no further refutation.

And although Francesca Pompilia, in her cross-examination, tried to conceal a longer stay at the said inn by asserting that they had arrived there at dawn, yet no proof of adultery may be drawn from the said lie,[212] for she made that assertion to avoid the suspicion of violated modesty, which might be conceived from a longer delay and more convenient opportunity. And so, inasmuch as her confession would have done her no harm, even if she had acknowledged it with circumstances leading to belief in the preservation of her sense of honor, neither can this lie injure her. [Citations.]

Since, for these reasons, the proof of the pretended adultery is excluded and almost utterly destroyed, no attention should be paid to the fact that Count Guido, in his confession, claims the mitigating circumstance of injured honor, as regards both his wife and his parents-in-law; and that this confession can not be divided for the purpose of inflicting the ordinary penalty. For authorities of great name are not lacking who affirm that a qualification to this end added to a confession ought to be rejected; and above the others is Bartolo [Citation], who proves this conclusion by many reasons, and responds to those given contrary [Citation], where it is said that a judge should not admit such qualified confession. [Citations.]

[clxxxii] Nor is such a plea of injured honor always in one's favor in avoiding the capital penalty, but only when vengeance is taken immediately; or after an interval, according to more lenient opinion, when the adultery is proved by condemnatory sentence or by confession.

But the reins of private vengeance would be relaxed far too much to the detriment of the state if, when proof of adultery were lacking, a stand could be made for the purpose of diminishing the penalty upon some qualification added by the defendant to his confession. Because in this way a witness might make a way of escape in his own cause, which is not permitted to anyone. [Citations.] And nothing more absurd [512] can be thought of than that the burden of proof incumbent upon him for escaping the ordinary penalty might be discharged by the mere assertion of the defendant.

Nor should we admit the opinion that, even when the adultery is proved, a husband may kill, after an interval, an adulterous wife without incurring the capital penalty, since the weightiest authorities deny that. [Citations.] Bartolo, in distinguishing between real and personal injury, affirms that when injury is personal, it should be resented immediately; but if it be real it may be resented after an interval. [Citations.] And Gomez declares: "I hold the contrary opinion, indeed,[518] that a husband may be punished with the ordinary penalty of such a crime as murder; and for this reason he may not by any means be excused, because murder can not be committed to compensate for a crime or for its past essence, unless one kill in the act of flagrant crime," etc. **[clxxxiii]** And in subsequent numbers he responds to reasons given to the contrary. [Citation.] Gaill, after he says that murder committed for honor's sake is permissible, states that this exception should be understood to hold good if the injury be resented immediately, but that it is otherwise if done after an interval. In this case the retort is more like vengeance than the defense of honor, and the offender is held to account for the injuries. [Citation.]

Much less can it be claimed that the vengeance was taken immediately because the husband executed it as soon as possible, according to the authorities adduced by my Lord Advocate of the Poor [Citation], where he tries to show that since Guido was unarmed, or insufficiently armed (that is, he was girded only with a traveler's sword)[204] he could not attack the wife accompanied by the Canon; for Caponsacchi, as he claims, is strong and bold,[29] and accustomed to sin in that way, and was carrying firearms.[470] And the wife showed herself ready to die in the defense of her lover; for it is said still further that the wife rushed upon Guido with drawn sword,[227] and was about to kill him, if she had not been checked by the police officers. But the opportunity to kill an adulteress is not to be so taken that a violent death may be visited upon her with all security and without any risk. For every legal opinion giving excuse for diminishing the penalty shrinks from this. For such diminution of the capital penalty follows because of the violence of sudden anger, which compels the husband to neglect the risk to his own life, that he may avenge the injury done him by the adultery. And so

this first opportunity, as spoken of by the authorities, in order that murder may be said to be committed immediately, should be understood to be whenever an occasion first offers itself, in excusing the delay in taking vengeance either because of absence or for some other just reason. Such is the fact in the case about which Matthæus Sanfelicius writes, *contr. 12.* For in that case the adultery was committed in the absence of the husband, and the wife had run away, so that he could not have avenged himself earlier, as is evident from the narrative of fact given in *No. 1,* and *No. 28* established this conclusion: " So they are excused if they take vengeance as soon as possible, since it then seems that they killed incontinently."

But who can say in our case that the husband took the first [clxxxiv] chance, since when he found his wife in the very act of flight, at the tavern of Castelnuovo, he abstained from vengeance with his own hand, and turned to legal vengeance, to which he had always clung.[222] And indeed he charges himself with the worst baseness when he asserts that he was unequal to the task of taking vengeance because of the fierce nature of the Canon;[29] since, when the latter had been arrested, Guido could have rushed upon his wife. Nor ought the kind of arms they carried to have alarmed him, because, according to the description made in the prosecution, it is apparent that the Canon was wearing only a sword.[221] And so they were provided with like arms. He would not have taken such care of his own safety if he had been driven to taking vengeance by the stings of his honor [223] that needed reparation, even at some risk to himself. For just anger knows no moderation. And he should lay the blame on himself if, alone and insufficiently armed, he had followed up his wife, who was fleeing, as he might fear, with a strong and better-armed lover. His very manner of following her proves the more strongly that his mind had turned toward legal vengeance, for the purpose of winning the coveted dowry,[46] rather than to vengeance with his own hand for recovering his honor.[223] For facts well show that such was his thought. [Citations.]

Likewise the delay of the vengeance after the return of the wife to her father's home excludes the pretended qualification that the vengeance was taken " immediately," because he could not put it into execution sooner. For the return home took place on October 12,[284] of last year, and the murder was not committed till the second of January [319] of this year. And we should rather assert that he was waiting for her confinement,[307] which took place on December 18,[299] in order that he might make safe the succession to the property, for which he was eagerly gaping;[46] because he immediately put into effect his depraved plan by destroying his wife and her parents with an awful murder; from a comparison of these dates it will be easy to see this. Hence, it is evident with what purpose he committed the murders, and whether

this vengeance for the asserted reparation of his injured honor may be said to have been undertaken " immediately," that is, as soon as opportunity was given, according to the authorities adduced on the other side.

Then when he had chosen legal vengeance by the imprisonment of the wife and of the pretended lover, and by the prosecution of the criminal cause, it was not permissible **[clxxxv]** for him to go back to vengeance with his own hand; and in taking that he can not be said to have taken vengeance immediately. He also violated public justice and the majesty of the Prince [420] himself. This single circumstance greatly exasperates the penalty and increases the crime. [Citations.]

[But the above is true] in spite of the fact that the conclusions adduced by the Advocate of the Poor (in § *Et tantum abest*) [cf. p. cxxxii] may be applicable, and likewise the authorities approving those conclusions, on the ground that it is not presumable that the husband has remitted the injury, but rather that his desire to avenge himself has continued; and that this excludes the charge of treachery, even though the husband use trickery in taking vengeance. Because in the present case the question is not as to the nature of the murder, from which it might be claimed to have been treacherous. The husband indeed did not conceal his injury, but rather laid it bare by turning to legal vengeance. Although this is possibly less honorable, yet since it was pleasing to him, for the purpose of gaining the dowry,[46] he could not when frustrated in this hope, because the adultery was unproved, take up again the vengeance with his own hand. And this is true, even though he pretends as an excuse for his delay that he could not accomplish it sooner. For since the delay and hindrance arose from his own act, he could not take therefrom the protection of an excuse. [Citations.]

But, however he might find excuse for the barbarous slaughter of his wife while under the authority of the judge [419] at the instance and delivery of her husband, certainly the murder of Pietro and Violante [401] should be considered utterly inexcusable. In his confession he has tried to apply to them also his plea of injured honor, because of their pretended complicity in urging the flight of his wife and in her asserted dishonor. Yet no proof of this qualification can be brought, nor did the slightest shadow of it result from the prosecution for flight. And this is proved to be improbable, and utterly incredible, from merely considering the fact that Abate Franceschini,[288] brother of the accused and confessed defendant, would not have consented that she be committed to their custody if he had had **[clxxxvi]** even the slightest suspicion of their complicity, since he so keenly desired the reparation of their honor. This fact, which was plainly confessed in an instrument prepared in the statement of fact in the Italian language [Pamphlet 10] and very stoutly denied by the Procurator of the Poor, was ad-

mitted by his own wonderful ingenuity in denying merely that notice had reached the husband, or in claiming that the Fisc could pretend to no more than mere presumptive knowledge in Guido.

But, still further, such knowledge is quite probable and is drawn from strong proof. For it is very probable that Guido was informed by his brother of his wife's departure from the Monastery, of her establishment in the said home, of the obligation [287] assumed by her parents to provide her with food, and especially of her detected pregnancy. [Citation.] But we are not now arguing to prove the husband's knowledge thereof, but to draw from that consent of Abate Paolo a proof which would exclude the pretended complicity of Pietro and Violante in the dishonor of the wife, which latter is by no means proved.

So far is such complicity from being proved as regards Pietro, that the very contrary is quite evident from his will, made in 1695, after litigation had been instituted about Pompilia's pretended birth. In this will, notwithstanding the litigation, in the first place he leaves as his usufructuary heir Violante his wife, and, after her death, Francesca Pompilia, laying upon her the obligation to dwell in the City and to live honorably. This is evident from the details of the said will given in our present Summary, No. 5. [Cf. pp. clvi-clvii.] In this he also asserts that she had thus far conducted herself honorably, and he claimed to leave the annuity to her because of her good manner of life. And so it becomes still further incredible that he, while alive, was willing to conspire in her dishonor, from which he shrank even when dead. For the income was to be taken from her if she should live a dishonest life, and he urged her in case her marriage were dissolved to assume a religious dress, and he left her a fat legacy to that end.

Nor can it afford any proof of this pretended complicity that when Guido had made pretense of delivering a letter sent to them from the Canon,[321] the doors were immediately opened by Violante [323] **[clxxxvii]** to the assassins. The attorneys for the Defense try to argue from this ready credulity that the name of the lover was not hateful to Violante, and that hence his intimacy with Francesca was not displeasing. But since the Canon was the author of her liberation from deadly peril by bringing her from her husband's home to her father's hearth at the neglect of his own risk, it should not seem wonderful that Violante should give proof of a grateful mind for the help given her daughter and should open the door. Nor can one infer therefrom consent in unchastity, from which their past acquaintance had been entirely free. Much more is this so at a time when he himself was absent and in banishment at Civita Vecchia.

Therefore the true cause, on account of which the Comparini also were murdered, could be no other than the hatred with which the husband had been aflame; [and this first of all was] because of the law-

suit [421] concerning the supposed birth, which they had brought, and which had deceived him in his hope of gaining a fat dowry and inheritance; [and second], his desire for vengeance because of the pamphlets [109] distributed at the time of the said lawsuit, and which had exposed the meagerness of the home comforts and the wretched treatment they had received in the home of the husband. These two do not excuse Guido from the penalty for premeditated murder, and indeed increase it, even raising it to the crime of *læsa majestas*,[420] according to the well-known order of the Constitution of Alexander, as was proved in our past information, § *Accedit ad exasperandam.* [Cf. p. lxxviii.]

To escape the penalty assigned thereto by the disposition of this decree, in vain does he turn to an excuse drawn from supervening provocation. [Citation.] But so far as it is claimed that this crime resulted from the counsel they gave toward her flight, and their complicity in the same, the proof of such complicity is entirely drawn from the asserted letter,[112] written by Francesca Pompilia to Abate Franceschini. But this letter has been completely rejected, and even spurned by Guido himself, since in the prosecution for flight we find no insistence was made that action should be entered against Pietro and Violante for their pretended instigation. Pietro, moreover, had long ago broken off the lawsuit brought as regards the pretended birth [262] and the revocation of the dowry contract, and so this complicity can not be made to seem the sole provoking cause, which would exclude *causa litis*. For such a cause should be true and not pretended, and should be in accord with the crime committed. [Citations.] **[clxxxviii]** These excuses, indeed, which are claimed to be drawn from complicity in the asserted dishonor, are still further excluded by lack of proof, both of the impurity and of their connivance therein; and so the provocation implied therefrom is shown to be entirely irrelevant, and possibly fraudulent.

The other suit for divorce,[266] brought in the name of Francesca Pompilia, it is vainly claimed is made void because of the asserted invalidity of the summons; for this summons was executed against Abate Franceschini, who lacked the authority of a proxy. Yet his authorization was quite full enough for a lawsuit, as is evident from its tenor as given in our present Summary, No. 6 [cf. p. clvii], and accordingly when a suit was brought it was ample for receiving a summons. [Citation.] We are also dealing with the conditions of the Constitution of Alexander and of the order of the Banns given against those who commit offense on account of lawsuits. Hence the reply is not relevant, which is given by the Procurator of the Poor in § *Quae etiam aptantur* [cf. p. cxviii], that when the dishonesty of the wife is established her impunity from the wrath of her husband, who would take vengeance, should not be permitted by the introduction of a divorce suit. Nor can such murder be said to be committed for the reparation of honor when

committed in anger at a lawsuit. For he takes for granted as proved, what is in question, namely, the dishonor of the wife, the proof of which is quite lacking. And Guido might have proceeded to such an extreme if, as soon as the adultery was committed, his wife brought a suit for divorce; but it is otherwise since he tried that revenge after the way of legal vengeance had been chosen by bringing criminal charge for the pretended adultery and for the purpose of winning the dowry.[46] For after he was frustrated in this hope (since no proofs of adultery resulted from the prosecution), and after her husband's mind had been exasperated, she ought to be permitted to provide for her own safety by begging for the remedy of divorce. And while such judgment is pending any murder inflicted upon her ought surely to be expiated by the penalties inflicted under the sanction of the Alexandrian Constitution and of the Banns. For the provision of this decree is applicable, since the murder was committed while the criminal cause, brought against her by her husband, for pretended adultery,[269] was still pending. And this decree includes both civil and criminal suits, as is evident from reading it.

[clxxxix] Likewise the assembling of armed men,[409] and their introduction into the City for accomplishing more safely the murder of the entire family, increases the crime to *læsa majestas,*[420] and also necessitates the increasing of the punishment, as was affirmed in our former information. Nor is this avoided by the replies given, or rather repeated, by the Defense, and especially by the response that since the principal offense was committed for honor's sake (and hence the ordinary penalty of the *Lex Cornelia de Sicariis* has no application for that reason), so likewise the penalty for assembling men, imposed by the Apostolic Constitutions and the General Banns, can not be inflicted; for the latter is included with the penalty for the principal offense, which alone is to be attended, since the spirit and purpose make differences in crimes. [Citations.] Because the order of the said Constitution and Banns would prove utterly vain if the penalty for assemblage should cease, whenever the assembly were made for the purpose of committing some crime that is punishable with a milder penalty. [Citation.] This Bull indeed is applicable even when men are called to arms in a permissible cause and to good end;[411] because by it the Supreme Pontiff wished to provide for the public security and to restrain the audacity of those laying down the law for themselves. Hence all the more shall it have place when the assembly may be made for an evil end, namely for committing crime, even though the crime may not deserve the ordinary death penalty, and when the crime actually follows. [Citation.] Spada gives this reason, that the Pontiff in establishing this Constitution considered only the uproar and other ills which are accus-

tomed to arise from the assembling of armed men to the injury of the public peace. And although his opinion was rejected by the authorities adduced by his Honor, the Advocate of the Poor, in § *non refragante* [cf. p. cxxxv], this refutation does not apply to the assembling of armed men to an evil end (even though this end is not so criminal that the death penalty may be inflicted), but to their assemblage for a permitted cause of regaining possession immediately, by meeting force with force. Even in this latter case Spada holds that there is place for the order of the Bull. Hence the refutation given above does not prevent the application of the provision of the abovesaid Constitution to our case, since the assembling was prearranged for the murder of an entire family, which was put into execution with reckless daring.

[cxc] Nor may the opinions of the said judges of the Sacred Rota, requiring that the assemblage be directed against the Prince or the State, and not to commit some other crime, stand in the way; because if this qualification were accepted as true, the decree would be vain which had raised the act to the crime of *læsa majestas* [420] and rebellion; for this crime would result plainly enough from the deed itself, and from the intent to disturb the peace of the Prince and the State. And so far as the opinion affirmed by these authorities does have foundation, it can be applied when we investigate the order of the Constitution, and not of the Banns issued later. For this decree would prove vain and useless if the capital penalty, imposed thereby against those assembling armed men, could be applied only when the crime for which the assembly had been made was punishable by the same penalty; and even if this necessity be admitted, the application of the Constitution can not be avoided, because no plea of injured honor can be alleged in excuse for the murder of Pietro and Violante, and it had not at all been proved as regards Francesca Pompilia.

Likewise the preparation and the use of prohibited arms [418] is also punishable with the capital penalty, if we investigate the order of the Banns and Constitutions of Alexander VIII, of sacred memory. Nor is this sufficiently avoided by the response given by the Defense that it is included in the main offense; so that no greater penalty can be inflicted for it than the main crime itself deserves. For what we have said above as regards "an assembling" is opposed to such a confusing of the punishment of the Banns, and the authorities adduced in our past response, § *nec delationis* [cf. p. cc] affirm the contrary. And those authorities cited for the contrary opinion should be understood to apply only when one is dealing with an insult, or with murder committed in a quarrel, or in self-defense, or for the sake of immediate reparation of honor. [Citation.] The difficulty is at an end in our case, because of the clear disposition of the Banns, which expressly declare and com-

mand that the penalty for the carrying of arms is not to be confounded with the penalty of the crime committed therewith. Nor does the response given by the Procurator of the Poor seem strong enough to avoid this; namely that when, under the common law, the Banns receive only a passive interpretation, merely the crime of preparing and bearing arms for committing murder is considered; but that it is otherwise if the arms are borne, [cxci] for no ill end, and then a crime is committed with them. Because it would be too harsh for one bearing arms for no ill end and then sinning with them, to suffer a greater penalty than one preparing arms to commit crime, and carrying his purpose into effect. Hence these Banns never can receive such an interpretation. For since by them the carrying of arms is forbidden as pernicious and as affording occasion to commit crime, much more should the bearing of them when purposed for committing crime be considered prohibited and punishable with a rigorous penalty. This is especially true when we consider the declaration that the crimes are not to be confounded with one another.

There is left, finally, one other qualification, which greatly aggravates the crime, namely the violating of the home assigned as a prison [419] with the consent of Abate Franceschini.[288] And this is so in spite of what can be alleged as to Guido's ignorance of this circumstance. Because in the said writing prepared in Italian for giving true notice of the fact [Pamphlet 10], it is asserted that the entire management of the cause was left and committed to this same brother,[256] since Guido had left the City. Hence it is quite incredible that Guido was not informed by him of so important a matter. And as concerning the distinction between violating a public prison and mere custody in a home under bond, and as to offense permitted therein for honor's sake, we have given sufficient response in our past argument § *Quibus accedit* [cf. p. ccii] and those following. For the same reasoning is applicable in both cases, since in both the person detained is under the protection of the Prince whose majesty is accordingly insulted. And the excuse would hold good if we were arguing about the resenting of an injury offered in prison. Under these very circumstances do those authorities adduced by the Defense speak, as is evident from their recognition of them.

Therefore, in the present case many grave qualifications are present, which increase the crime, and on account of these his Honor, the Advocate of the Poor, admits in § *Agnoscit Fiscus* [cf. p. cxxxiv] that the penalty should be increased. Nor can such increase of penalty be made good except by death. For even if the adultery were proved, as it is not proved in our case, the mere murder of the wife, when committed after an interval, could demand only a diminution of penalty, according

to the more lenient opinion. Hence the justice of the decree for the torment of the vigil should be said to be sufficiently asserted and vindicated against opposing reasons. And now [cxcii] that confession has followed, there remains only that condign punishment be inflicted in expiation of this awful crime.

GIOVANNI BATTISTA BOTTINI,
Advocate of the Fisc,
and of the Reverend Apostolic Chamber.

[cxciii is blank in original.]

[cxciv] [File-title of Pamphlet 13.]

By the Most Illustrious and Most Reverend Lord Governor of the City in Criminal Cases:

Roman Murder-case with qualifying circumstance.

For the Fisc, against Count Guido Franceschini and his Associates.

A reply in matters of law, by the Lord Advocate of the Fisc.

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

[cxcv]

Romana Homicidiorum cum qualitate.

[Pamphlet 14.]

Most Illustrious Lord:

The matters deduced by his Honor, the Advocate of the Poor, for the defense of Guido Franceschini, who is accused of three murders with very grave qualifications which magnify the same, are of no real force in proving [first] that he should not be punished with the ordinary penalty of the *Lex Cornelia de Sicariis,* inasmuch as he had confessed these crimes, and [secondly] that simple torture only should be demanded for gaining the truth as to these, and that the torment of the vigil [516] should be omitted. I will attempt to show this, in responding to these points singly, so far as the excessive scantiness of time admits, and will keep my eyes on the rights of the Fisc, as the duty of my office and the dire atrocity and inhumanity of the crime demand.

The chief ground taken by my Lord consists in placing on an equality [first] a case of vengeance taken immediately by the husband with the death of the adulteress found in her sin, and [second] that of one slain after an interval when the wife is plainly convicted of adultery (as he claims is proven in our case). But this falls to the ground both in fact and in law; and hence the inference for the moderation of the penalty drawn from this same parity is likewise shown to be without foundation.

In fact, the proof of the pretended adultery is quite deficient according to what I deduced fully in my other information. In that, I have confuted singly his proofs, or rather suspicions, resulting from the prosecution, to which his Honor attaches himself. I have shown that the wife's flight in company with Canon Caponsacchi, the pretended lover, was for a legitimate reason (namely the imminent and deadly peril, which she feared), and not from the illicit impulse of lust. The participation and complicity of the Canon Conti and Signor Gregorio Guillichini,[146] relatives of the Accused, in forwarding the same, ought to prove this. For they would not have furnished aid if she were running away for the evil purpose of violating her conjugal faith, even to their own dishonor. But they well knew the necessity of the remedy, and that it was to free her from peril. And a witness for the prosecution [54] in the same trial for flight swore to having heard this from Signor Gregorio. And they gave their aid in carrying this out.

Nor is it at all relevant that, in the decree in condemnation of the same [cxcvi] Canon to banishment in Civita Vecchia,[271] the title of "carnal cognition" was written down; because, as was formerly responded, the alteration of that was demanded, and likewise the substi-

tution of a general title relative to the trial. And since no proofs of it resulted either from the prosecution or from the defenses which the unfortunate wife (who was dismissed with the mere precaution of keeping her home as a prison) could have made, if she had not been so horribly murdered, and since the said decree, issued without her having been summoned or heard, would be void, the inscription made by the judge in the records as a title could not convict her of that crime; but only the truth of the fact resulting from the proofs should be considered. [Citations.]

I acknowledge [403] that the Accused should have been considered worthy of some excuse if he had slain his wife in the act of taking her in flight with the pretended lover; since for this purpose, not merely the absolute proof, but the mere suspicion of adultery committed, would be enough. [Citation.] But when, after neglecting the pretended right of private vengeance, he sought out with entreaty public vengeance, by having her arrested,[222] he could not thereafter, while she was under the public authority of the judge, take private vengeance by butchering her who had no fear of such a thing. The suspicion of a just grievance, which is difficult to restrain when aroused, excuses the husband in part, if not entirely, whenever he takes vengeance immediately under the headlong impetus of anger. But when the vengeance is after an interval, and while the cause is in the hands of the judge, and the victim is imprisoned at his own instance, this does not hold good, as will be proved further on, by showing the irrelevance of the principle assumed.

Nor does the Glossa in the alleged text, in the law of Emperor Hadrian, stand in the way; because it speaks of a son taken by his father in flagrant adultery with his stepmother, and killed by the father immediately. [Citation.] And there is a wide difference between a father and a husband killing after an interval; because, as Farinacci adds, a father has the greatest authority over his son, and by ancient law could even kill him. And certainly the husband does not have this. **[cxcvii]** The law also more readily excuses a father,[493] because he is always supposed to take good counsel for his child, from the mere instinct of paternal love. But one does not have this same confidence as regards a husband, who is accustomed to conceive unjust suspicion of his wife more readily. Hence it is not permitted that he kill her on mere suspicion after an interval. Nor is he in any way to be excused on this account, according to the text. [Citation.] "The devotion of a father's love usually takes good counsel for his own children, but the hot precipitancy of a furious husband should readily be restrained." [Citation.]

This is so far true that a father is not excused unless he kill, or at least severely wound, his daughter along with the adulterer; so that it

should be attributed to fate, rather than to paternal indulgence, that she escape death. And this has been passed by law-makers for no other reason than that such a grievance, provoking to rash anger, is required for excusing a father, so that he may not spare his own daughter. But since this statute is not to be found among the laws about husbands, the manifest difference between the two, because of the husband's excessive readiness to seize a suspicion and fly into a rage against his wife, is plainly revealed.

Nor is mere suspicion a sufficient ground to diminish the penalty for a husband who kills his wife after an interval. This is evident from the very authorities excusing him in such a case, whenever the adultery is proved either by the confession of the wife or by other proofs, so that she can be said to be convicted of it. [Citations.] Bertazzolus says: " I have seen the matter so regarded in the contingency of such a fact, and the husband has been excused who had killed an adulterous wife, not found in the very act, but whose adultery was really and truly existent and was quite plainly proved." Hence it is plain, from these very authorities adduced by his Honor, that the husband who kills his wife after an interval is not excused because of mere suspicion, or because of an adultery case which is still pending judgment, and which he himself had brought.

[cxcviii] In law, also, is his assumption proved to be without foundation, which places on an equality [first] vengeance taken immediately, that is, in the very act of taking the wife in adultery, or in acts immediately preparatory, which lead him to such a legitimate belief; and [secondly] vengeance taken after an interval, even when the adultery is evident from such proofs as render it perfectly clear. There are many authorities who urge the diminution of the penalty for the following reason which they give—that the sense of injured honor always keeps urging and provoking to vengeance, and that a wife may be well enough said to be taken in adultery when she has either confessed it or been convicted of it. And these authorities have been collected with a full hand by his Honor, and I myself recently pointed out one of them. But the contrary opinion is the true one and is accepted in practice. To this fact the most distinguished and most skilful practitioners of our time in criminal law bear witness. These are [first] Farinacci, where, after he has first learnedly answered the reasons and authorities adduced to the contrary, he concludes that he undoubtedly believes so as to the law in the case, and counsels that it be so held, unless we wish to err; and [second] Canon Raynaldus, who also filled the office of Procurator of the Poor with the highest praise, and so it may well be believed that he was very strongly inclined toward mercy and commiseration, and that he therefore adhered to this opinion in the mere zeal for the truth. And he declared it to be the truer and the

more advantageous to the State, and said that one should not depart from it in giving judgment. [Citations.]

But even if the conflict of authorities might in some manner favor the diminishing of the penalty for the Accused, if there had been excess merely in the matter of time; yet he is still to be considered as inexcusable, so that he can not escape the ordinary penalty, since so many qualifying circumstances are present which increase the crime; and any one of these is punishable with death.

To this end we should first consider the assembling of armed men,[409] which is so very injurious to the public peace, and constitutes the crime of "conventicle." In the Banns, chapter 82, this is punishable with the death of its author. It is also declared that it is enough to establish this crime if four [410] armed men are assembled. This had been formerly [cxcix] prohibited under the same penalty by the seventy-fifth Constitution of Sixtus V, of blessed memory, which had raised it to the crime of rebellion, for whatever reason it might be done. Spada proves this fully, asserting that it should generally be so understood in all cases in which the assembling of men has been prohibited.

To escape or evade this capital penalty, it is not a relevant excuse that a husband may kill an adulterous wife by armed men brought together. For, however it may be when a husband wishes to kill his wife taken in adultery, and is afraid that the armed adulterer can resist him, and that he may have servants for his aid (in which case he himself can not take vengeance otherwise than by calling together helpers, as Caballus advises); yet in the case of vengeance taken after an interval, and while the wife is under the power of the judge,[419] and on the mere suspicion of adultery, such convocation of armed men can not be said to be at all permissible. For the seventy-fifth Constitution of Sixtus V, of blessed memory, prohibits such assembling even on lawful occasion, as a disturbance of the public peace. [Citation.] And so it is much more to be prohibited and much the rather to be expiated with the ordinary penalty both of the Constitution and of the Banns, since it was made for an illegal and damnable end, namely to kill his wife, and his father-in-law and mother-in-law along with her. This is rendered plain by the assertion of the very authorities who excuse from the ordinary penalty a husband who takes vengeance after an interval. And indeed the path of private vengeance, which is hateful to the law, would be strewn all too broadly if, after the husband had chosen legal vengeance [222] and had neglected to avenge his pretended injury in the act of seizing his wife in flight with the pretended lover, he should be excusable in taking vengeance after an interval with all security, by means of armed men, and in killing her while entirely off her guard, and under the power of the judge, without the slightest risk to himself.

This is true in spite of the response which might favor him, that he neglected to take private vengeance because he was unarmed, and the wife was found in the company of the Canon, who was a bold, sturdy man.[29] The husband should impute it to himself if alone and unarmed he was pursuing his wife, fleeing with the lover. For then he could take associates with better right, and [cc] fully armed could pursue her; and in such a case his assembling of men would be somewhat excusable. But this is not so when he takes such awful vengeance after an interval. For if we consider the reason why a husband killing an adulterer or his wife is punished with a milder penalty according to the quality of the persons, if the vengeance follow on the very act—namely, rash anger, which can not be restrained—the assembling of armed men to do that after an interval is plainly revealed to be illegal. For rash anger would cause him to expose himself to the risk of resistance by the adulterer, who is not accustomed to approach unarmed. Because of this risk the penalty is diminished, since it shows that the husband carelessly exposed himself thereto, because of the violence of the anger which blinded him. This is [not] the case in vengeance taken after an interval, taken with all forethought and by means of armed men, so that the husband can not be afraid that any evil will befall himself in carrying it out. Such preparation is quite repugnant to rash anger, which can not be restrained, and from which excuse is drawn. [Citation.]

The second qualification that increases the crime results from the kind of arms [413] with which the murder was committed, for these were prohibited by the well-known decree of Alexander VIII, of sacred memory. This was not merely for the carrying, but even for the keeping, introduction, or manufacture of them for any cause whatever, even under the pretext of military service or the execution of justice. Hence they would be all the more prohibited [when carried] for the purpose of taking such impious and awful vengeance by the destruction of an entire family.

Nor is the carrying of arms in such a case to be confused with the main crime of murder; because when a greater penalty might be imposed for the former, as when excuse for the killing is drawn from injured honor, the carrying of the prohibited arms comes to be punished with the ordinary penalty. [Citations.] Nor are the authorities adduced to the contrary worthy of attention, for they hold good in the circumstance of murder done in self-defense or because of provocation in a quarrel. [Citation.] Still further, these are not applicable because they do not speak within the bounds of the Constitution, which so distinctly [cci] prohibits such arms. For Policardus speaks of the *Regula Pragmatica* which takes for granted the qualifying circumstance of the crime of treachery from the kind of arms, and he asserts that

this order ceases in murder for self-defense, or on provocation in a quarrel, when committed with the said arms. But this judgment differs by the whole heaven from the sanction of our Constitution; because the latter was issued for the very purpose of entirely exterminating so pernicious a kind of arms.

The third qualification likewise increasing the crime is murder committed because of a lawsuit;[421] for by the well-known decree of Alexander VII, of blessed memory, this was increased to the crime of rebellion and *læsa majestas,*[420] punishable with death and the confiscation of goods. This qualifying circumstance as regards the slaughter of Pietro and Violante can not be denied; because the Accused had won a victory [263] in the lawsuit. And hence the offense should [not] be said to have been committed because of just anger for injury inflicted upon him; [first] by the pretense of birth, which was revealed after the marriage had been celebrated, in order that they might break the marriage contract; [second] by the publication of pamphlets [109] greatly to his injury; and [third] by their conspiracy in the flight of his wife to the injury of the honor of the Accused and of his entire family. They claim that since this cause for avenging the injury is graver than that arising from the lawsuit, the murder should be attributed to it, as more proportionate thereto.

But the victory [263] he obtained had regard only to the actual possession of the property while the lawsuit was under appeal.[264] And the parents were still pursuing this suit,[265] so that that cause continued and could not be said to be extinct. The injury, indeed, from whatever different causes it may be claimed to have arisen, really came from this same lawsuit. And this had regard both to the pretense of birth revealed, and to the insults contained in those pamphlets [109] concerning the meagerness of the family affairs (which was quite the contrary of the boasted riches, in the hope of which the marriage had been made), and concerning the ill-treatment which the parents of the wife had suffered in the home of the Accused. For by this marriage agreement food was to be furnished them.[93] Still further, as to any conspiracy in her flight, much less as to any complicity in her pretended adultery, we have no proof at all. And so the cause of hatred conceived because of the lawsuit kept always urging him, and it does not redeem the criminal from the penalty inflicted by the decree of Alexander, because the suit might have been injurious to the Accused, either in his substance or in the manner. For this indeed presents such a cause as is always required in [ccii] premeditated murders. Nor does it exclude the qualifying circumstance of the lawsuit, and indeed confirms it; since it is explicitly presupposed that injustice had been committed. Otherwise an opportunity to take private vengeance would be permitted, which in all law is forbidden, especially when a lawsuit is going on; because then the

majesty of the Prince [420] is insulted, as was proved in my other information, § *Accedit ad exasperandum.* [Cf. p. lxxviii.]

The fourth and, indeed, a very grave qualifying circumstance is drawn from the place in which the crime was committed, namely in the home [417] of those slain. It was also in an insidious manner, by pretending the delivery of a letter sent by Canon Caponsacchi.[321] For one's home should be the safest of refuges to himself, as was proved in our other information, § *plurimum quoque.* [Cf. p. lxxix.] The manner indeed savors of treachery, as is proved not merely by committing murder under the show of friendship, but also at a time when the power and obligation of special caution in the one slain had ceased. [Citation.] And this is far from doubtful in our case, for the wretched parents could have had no such apprehension from the Accused, who was staying in his own country.

To these is added a fifth very grave qualifying circumstance, drawn from the place with respect to the very wretched wife. For she had been imprisoned at the instance of the Accused, and was detained in the home of her parents as a prison with the consent of the Abate,[288] his brother; and hence she was under public safekeeping,[419] which it were wrong for the Accused to violate without incurring the penalty of *læsa majestas.* [Citation.]

This very grave qualifying circumstance, which increases the crime, can not be avoided by the dual response given by his Honor; first, that we are dealing with no prison properly speaking; second, that one giving offense, or killing in prison, is excused on a just plea of injured honor. Neither of these excludes this qualifying crime; for the unsuitability of a prison would be considerable if we could defend a violation of it made by one in prison and so to avoid his own injury, but if it were otherwise when we were arguing in his favor for avenging an injury to himself in a home [cciii] assigned as a prison.[286] The plea of injured honor can help one only if the offense in prison follow in self-defense under the very impulse of rash anger. In such circumstances the authorities adduced by his honor would hold good. But this is not so in excusing vengeance taken after an interval upon one imprisoned even at the instance of the slayer. For then the qualifying circumstance of the place greatly aggravates the crime, as it is indeed injurious to the public safekeeping and involves treachery. [Citations.]

It is therefore very evident that the murders committed by the Accused have many qualifications mingled with them, which greatly magnify them. And however far the opinion has weight, which urges the diminution of punishment for one killing an adulteress after an interval, and however much the pretended adultery may be declared to have been proved in the manner required to gain such diminution, even by all those in favor of the milder judgment, still this penalty

because of these qualifications would have to be increased and the ordinary penalty of the *Lex Cornelia de Sicariis* in its entirety would have to be demanded. And therefore it seems superfluous to argue about the kind of torture, since in view of these very urgent proofs, of which I understand there is no doubt, and in view of the well-known powers granted to the Most Illustrious Governor, it is quite within limits that the crime should be punished with the ordinary penalty, even if the qualifying circumstance of special atrocity were not present, so that the penalty should not be increased on that account.

But such a qualifying circumstance is not wanting here, as it results indeed from the treacherous manner and from the charge of *læsa majestas,*[420] which is provable in our case on three grounds; namely offense committed during a lawsuit, the assembling of armed men, and the violation of public safekeeping, because of the home assigned as a prison. For according to the Apostolic Constitutions, the crime would be raised to that degree upon the basis of the first and the second; and there should be no doubt as to the power of the Prince to do so. [Citation.] Spada asserts that in such a case, so far as all the effects of law are concerned, it should not be considered a matter of controversy that the qualification of special atrocity, which is in agreement with such a crime, is to be revoked. And in our very [cciv] circumstances Spada gives this opinion in demanding the torment of the vigil.

Nor can that qualifying circumstance of the person concerned, so far as it is proved, stand in the way of such infliction of the torment of the vigil, which does not allow the death penalty upon a nobleman [525] to be made worse, as is accustomed to happen in very atrocious crimes (because noble blood should not be degraded by such increase of penalty which adds infamy). But for this purpose merely the nature of the crime is considered, and not the quality of the person, which would hinder the execution of a penalty carrying with it such infamy. Otherwise the torture of the vigil never could be inflicted upon noblemen, priests, and men in religious office upon whom an infamous penalty can not be inflicted. But nobility affords no privilege in the manner of torment,[525] especially in very atrocious crimes. [Citation.]

GIOVANNI BATTISTA BOTTINI,
Advocate of the Fisc and of the Apostolic Chamber.

By the Most Illustrious and Most Reverend Lord Governor in Criminal Cases:

Roman Murder-case with qualifying circumstance.

For the Fisc, against Count Guido Franceschini and the others.

Response of the Lord Advocate of the Fisc.

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

RESPONSE

To the Account of the Fact, and Grounds in the Franceschini Case.

[Pamphlet 15.]

The splendid statue of Nebuchadnezzar fell because it was not firm on its feet. So fall to ground those imagined and forced suppositions concerning the origin of the present execrable murder, which the Anonymous Writer in his printed pages [Pamphlet 10] has tried to insinuate into the dull heads of the crowd.[61] This murder was committed here in Rome upon three wretched and innocent persons, by Guido Franceschini, assisted by four men who were armed with prohibited arms,[413] who were brought together for that purpose by the influence of money, and who were kept insidiously for many days at his expense. [These pages claim that] the crime arose from justly conceived anger; [first], because eight months earlier [373] Guido had discovered Francesca Pompilia, his wife, sinning against him in his own house at Arezzo, and [then] because she had fled in company with Canon Caponsacchi of the same city back to Rome to place herself again under the protection of Pietro and Violante Comparini, who had raised her as their daughter; and [thirdly] that the suspicion had also grown upon Guido that in her precipitate journey she might have broken with the Canon her marriage obligations, since certain love-letters [232] were found upon her, from which he unreasonably deduced her adultery, and he supposed that the said Caponsacchi was condemned as an adulterer to a three years' banishment at Civita Vecchia.[271] And these pages try, under the pretense of injured honor, to render Guido's crime less grave and to excite compassion, no less in foolish persons [61] than in the hearts of our most religious judges, for the purpose of disposing them toward a milder penalty and one out of keeping, according to the laws, with the quality, form, and circumstances of this crime. And this in substance is all that is claimed by the author of the pamphlet entitled *Notizie di fatto, e di ragione nella Causa Franceschini.* But they are indeed very much at fault in their account of that tragic history, which had a different beginning and an occasion independent of the imagined ground of honor. In that pamphlet it was presupposed [ccviii] all too bitterly, that Guido's honor had been injured by his wife; whereas she always preserved her sense of shame and had well observed the laws of conjugal honor, as is plainly shown in this present article.

That this sad catastrophe, this slaughter of an entire family, did not proceed (as the Anonymous Author claims in his pages) from the pretended sense of injured honor, but from damnable greed,[46] one can very clearly see by considering the fact that for this very object the

unfortunate marriage with Francesca Pompilia was entered into by Franceschini.[76] For it was taken for granted that after the death of her supposed parents she would surely fall heir to a considerable property.[92] All the more ought we believe that the crime was committed because of hatred arising from the three lawsuits then pending;[259] that is, two in the civil courts and a third in the criminal courts. One of these was as to the legitimacy of the parentage of Francesca Pompilia, the wife, and the nullification of the dowry-agreement,[260] and was brought by Pietro in the Tribunal of the Sacred Rota.[262] The second suit was for divorce,[266] and was brought by the said Francesca Pompilia before the Vice-Governor.[268] The third is a criminal suit, as to the pretended adultery,[269] which is still pending in the Tribunal of his Excellency the Governor;[270] this latter was brought under the very impulse of greed,[46] to gain the entire dowry. Since this fact was conclusively evident in the case introduced by the said Franceschini, he was deceived in this hope of gain by the failure of the proofs, which the defense caused to vanish utterly, as they could do by means of the wife. Hence he broke into an excess so tragic and so deplorable as to reveal clearly the tricks and frauds practiced for the purpose of bringing about that marriage. Here then are the plain proofs that this is the truth.

Guido Franceschini was staying at Rome in idleness, out of the service of a certain Cardinal,[39] without a soldo,[41] by which service he had provided for himself up to that time. His usual loafing-place was in the shop of certain women-hairdressers,[78] where he often announced his intention of setting up his house with some good dowry. He also boasted of the grandeur of his country, his birth, and his property. By his promises he induced this woman to find him a chance for such a marriage, and she informed him of the opportunity in the said Francesca Pompilia. The latter was then esteemed to be the true and legitimate daughter of Pietro and Violante Comparini. He set about this enterprise with the aid of his brother Abate Paolo, using the astute prudence [79] with which the malign serpent advanced his designs in [ccix] Paradise to subvert Adam into disobeying God's precept and into eating the forbidden fruit; for [Satan] considered the matter in this way: " If I wish to assault the man directly, who is so strong and so resolute, he will turn and give me a sure repulse. It is therefore better that I first tempt the woman, who is of a fickle nature and soft-hearted." And he made his first attack upon Eve; because when he had gained his point that he might have her, by her means it would be easier for him to win over Adam. " For he first attacked the mind of the weaker sex," are the ingenious words of St. Hilario.

And so for this purpose did the said Guido devise the marriage with the knowledge of his brother, Abate Paolo, and likewise to this point he succeeded in it. For he avoided talking with Signor Pietro [79] about

the marriage, by whom it would probably have been refused, and wished first to tempt Violante, his wife. Because by gaining her he would the more easily overpersuade her husband to give his consent. Nor was it difficult [80] for him to astound the woman, because he knew how to impress her very well with the thought of the grandeur of his country, of the first-rate nobility of his birth,[38] and of the great income from his patrimony, amounting to 1,700 scudi.[82] And he gave her an itemized account of it written with his own hand. She was enchanted thereby and, without getting any further information about the matter, she was able to persuade her husband and to extract from him his consent to it.[81] This proves what we read written in Proverbs: "A wife takes captive the soul of her husband." He speaks this of Mordecai who availed himself of Esther, when he wished to placate the anger of Ahasuerus against his people; of Joab, who used the services of the woman of Tekoah when he wished to soften the anger of David against his son; and of the Philistines of Timnath, when they wished to gain from Samson the secret of the riddle proposed to them at the marriage feast.

The credulous but deceived woman so cajoled her husband [81] that she at last induced him to sign the marriage agreement providing for a dowry of 26 bonds [91] and, at the death of the said Comparini, for all their possession,[92] amounting, as the Anonymous Writer acknowledges, to the sum of 12,000 scudi.[67] And, for the purpose of making the said Franceschini guardians of the said property even during the life of the Comparini, they had to give up even the income of it. This property consisted of numbers of profitable and well-situated houses, and of bonds.[583] The Franceschini also assumed the obligation [ccx] to take the said Comparini to the city of Arezzo, and there to feed, clothe,[93] and provide them such service as they would need. This promise was made not without the hope that on account of the insults and sufferings which they would have to bear their death would be hastened. And thus Guido would become the absolute master of their property.

After having signed the said agreement Pietro absolutely refused to go on with the effectuation of the marriage [84] of the said Francesca Pompilia, with the abovesaid Guido, of whom he had had few good reports;[83] and these were far different from the pretended riches and vaunted nobility. Hence one may well say of him what Persius concludes in his fourth Satire: "See what has no real existence; let the rabble carry off their presents elsewhere. Dwell with yourself, and you will know how meager your furnishing may be."

At any rate, the said Guido joined the said Violante, whom he had imbued with his flatteries and endearments, spurning any further consent of Pietro by keeping him in ignorance of it. And without the knowledge of the latter, Guido contracted the marriage with the said

Francesca Pompilia in the face of the Church.[85] And he evermore discloses by this act, which shows so little reverence to the promiser of the dowry, his own greed,[46] not merely for the amount which had been assigned to him in the marriage agreement, but also for the rest of Pietro's property. For he felt sure that after Pietro's death the property, by the entail [68] of the ancestors, would necessarily fall to the said Francesca Pompilia, who was already his wife.

When, after a few days, Pietro found out [87] that the marriage had taken place, though he reproved the deed vigorously, yet because what is done can not be undone, and by means of the cajoleries of Violante his wife [88] and the interposition of another Cardinal, whom the Abate, Guido's brother,[50] served, the poor old fellow was constrained to drink the cup of his bitterness. And he came, as it were by force, after many months to the stipulations of the dowry agreement. He quickly began to feel the effects of Franceschini's trick, since Guido had scarcely a single soldo of his own to pay the first expenses of that marriage agreement. Hence, to supply these, he was obliged, against the wish of Pietro to free from entail five of the bonds, or more, by the authority of the Auditor of the Most Illustrious Governor, and to sell them for [ccxi] meeting these expenses. Hence one may see clearly that the primary object of Franceschini in this proceeding was to trick Pietro, and Violante his wife, and their poor child, to enrich himself with the property of others.[46]

He can no longer deny the fraudulent pretense of vaunted riches of the Franceschini in the note written in his own hand [82] and given to the Comparini. And indeed the Anonymous Writer confesses it openly. For, in order to free Abate Paolo from complicity in that trick, the latter pretended that he took Guido his brother to task roundly for the alteration of the said note. The said Comparini very quickly found this out. For as soon as they had gone to Arezzo they learned that the property of the Franceschini family was very slight. And such were the miseries and abuses [95] that the Comparini had to suffer in victuals and in harsh treatment that they were obliged to return to Rome [100] after a few months;[98] for they were locked out of the home and had to go to the tavern to lodge; and these abuses were for the purpose of shortening their lives, either by their sufferings, or the fury caused thereby. And this fact is very evidently proved by the rent-rolls taken from the public records of the city of Arezzo. From these it is shown that the said Guido did not possess a single dollar's worth of the settled property mentioned in the said note. It is also untrue that he and his family enjoyed the highest rank of nobility in the city, because, from other extracts drawn from the public records of the city, it is evident that his family is of only secondary rank.[38]

The abovesaid crafty and fraudulent methods of dealing, which came to light long before the murder had followed, and which became known in this Court and in Arezzo, can well show that greed [46] was the origin of this premeditated slaughter (which was put in execution in such a horrible manner, as is notorious) and not the pretended ground of injured honor. For, according to common opinion, Abate Paolo, no less than Guido his brother, had worked the tricks [50] exposed as above. And by men they were suspected of subterfuge and craft, so that this made them more sensible of injury than anything else. Hence they could no longer boast the grandeur of their nobility and the affluence of their riches, which they had spread abroad on the lips of the crowd. And every one avoided having anything to do with them,[257] as persons of bad faith and as **[ccxii]** usurping a glory to which they had no real right.

The greediness of this self-interest became greatly inflamed; so that in these Franceschini brethren one may see the common axiom verified: " Craft is deluded by craft." [108] That is to say, Violante was urged on by remorse of conscience [101] and by the abuses and injuries received in their house, and was constrained by her confessor [104] at the time of the Jubilee [102] to reveal to Pietro, her husband, that the said Francesca Pompilia was not their daughter, but was of a false birth.[103] And this seems very probable in view of the age of 48,[64] which Violante had reached, when she pretended to be pregnant with her; because in the fourteen years, during which she had lived in lawful matrimony with Pietro, she had never had children. Also, by witnesses then living,[261] she could afford conclusive proof of the pretense of the birth. And when notice of that had been given to Abate Paolo, that he might come to some compromise over the annulling of the dowry contract for the entire patrimonial property, he spurned the kind offers made to him through the mediation of friendly persons and refused every means of peace. Then a warning (as to the falsity of the said birth and the illegality of the dowry contract) was served on him by Pietro before Monsignor Tommati.[262] And conclusive proof of the birth was given by six witnesses,[261] who were examined before the judge with questions offered in behalf of the said Franceschini. Yet the same judge saw best to forward the case during the mere immediate possession, by continuing to the said Francesca Pompilia the quasi-possession of her parenthood.[263] Nevertheless, an appeal was taken from his sentence,[264] and it was committed to the Sacred Rota, before Monsignor Molines,[262] where it still hangs undecided [265] as to the principal point of the pretended parentage and the nullity of the dowry contract. For righteous judgment in such a tribunal the judge doubtless awaited for conclusive proofs of the said pretense of birth. The nullity of the dowry contract would none the less be decided, because it had made declaration that the

said Francesca Pompilia was their daughter. And with this falsehood the advantage which the Franceschini had obtained for their own selfish gain by such tricks would cease.

All this is proved by the reflection that the trick of Franceschini was made public, not merely in Rome, but in Arezzo, [ccxiii] and that he also was deluded by a similar artifice because of the proofs already made, while judgment was pending, that the said Francesca Pompilia was not the real and legitimate daughter of the said Comparini. On the ground of these far-fetched suspicions, Guido made pretense of a reason for maltreating her with insults and blows, and more than once he provided himself with a sword [134] and fire-arms to take her life. He did this to take vengeance upon her for his own trick, by which he had been deluded.[108] Therefore it was quite right for the poor wife, who was of the tender age of sixteen years and a stranger in the place, to avoid the rage of her husband at different times by fleeing for protection to Monsignor the Bishop,[139] and to the Governor,[135] or Commissioner of the City, that they might put some check upon the cruelties she was suffering. And although these persons by their interest in the matter succeeded for the time in putting a stop to the threats, yet the poor intimidated wife always passed her days shut in a room.[127] And her fear was greatly increased because she saw that the said Guido had made a mixture of poison [133] with which he threatened he would take her life without the uproar attendant on the use of arms; and thus he would be the surer of his crime going unpunished. Now if, even at a time when no shadow of suspicion of dishonor had fallen, the husband was contriving the death of his wife, the Anonymous Writer might well abstain from soiling his pages for the purpose of proving that the slaughter of those murdered had had its origin in the impulse to repair offended honor. For his pages would have had much better foundation if he had consulted the truth, namely that these crimes had arisen from deluded self-interest.[46] [108]

The poor wife, in her agitation over these difficulties that we have told, had nothing else to do but think of finding refuge from the death she feared. And when her mind was somewhat sharpened by its vexations, she intrusted herself to the Canon Conti,[145] who is closely related to the Franceschini, and declared to him her miseries, her perils, and her just fears (although they were not unknown to him), in order that he might try to give her consolation by placing her life in safety. He was touched with living compassion and was moved to free her therefrom by pity for the grievous state in which she was. And he well knew that there was no other escape than flight from the home of her husband, according to the saying of the poet [Virg. A., III, 44]: "Alas, flee the cruel earth, flee the greedy shore." But not being able to give her aid in this affair, [ccxiv] he suggested to her that for putting

the matter into execution, there was no better person to the purpose than Canon Giuseppe Caponsacchi,[28 35] his friend and intimate, whose spirit had stood every test.[29] And when Conti had spoken of it to him, although Caponsacchi saw difficulty in aiding the desire of the young woman, because he did not wish to incur the anger of the Franceschini, yet at last the impulse of charity and pity [145] prevailed upon him to free this innocent woman from death. And when his readiness for the attempt was reported to her by Conti, she did not fail to inflame him with more messages and letters,[247] even containing alluring endearments, for the effecting of her escape. Yet she also kept during all this time her constant desire of not violating her marriage-vow, since in some of these letters [232] she praises the Canon for his chastity, and in others reproves him for having sent her some rather improper octaves. She also warned him against degenerating from the good behavior, on which she had congratulated herself and had planned with him the flight.

While her husband and the whole household were asleep, both of them, with the assistance of the Canon Conti,[35] set out upon a headlong journey [194] by post, without losing a moment's time, except for changing horses; and they arrived by night at Castelnuovo. And although the host had prepared a bed for rest, nevertheless they did not avail themselves of it. For Caponsacchi was always solicitously watching [214] to see that the driver prepared other horses,[219] to continue the journey to its end. Nor did the host of that tavern, when cross-examined in the prosecution for flight, ever dream of bearing witness that the wife and Caponsacchi had slept together [215] in the bed that was prepared, even though Franceschini, to his own dishonor, had published the contrary, that he might, by the pretense of injured honor, throw a false light upon the true grounds of the murders committed by him.

In the meantime her husband arrived. When his wife saw him, did she, timid as she was,[224] shrink back? Did she acknowledge herself guilty of any sin, or of any wrong done to him in guarding her purity and modesty? No! But all on fire, though she was at the tender age of sixteen years, as I have already said, the constancy of her own honor rebuked [228] him for the tricks and abuses [122] which he had employed, and for the threats and blows he had very often given her, and for the poisonous drugs [133] he had prepared to take her life. And [she declared] that she had been obliged to do as she had done, to find an escape by flight from graver peril, [ccxv] and to go back to the pity of the Comparini, who had raised her as their daughter; and that she had always been careful to keep her wifely honor intact. The same rebuke was made by Caponsacchi,[220] who during the flight had religiously observed the limits of due modesty.

What did Franceschini answer? What did he try to do, although he was armed with a sword [204] against his defenseless wife and against

Caponsacchi, who had with him only a little dagger? [221] Nothing, indeed! according to what witnesses who were present deposed; for he stood convicted by the just remonstrances of his wife.[228] But what did he do? He gave up all vengeance, which by right of natural law, or much more by civil law, he might have taken for that;[403] and, as the Anonymous Writer goes on to boast in justifying him for this execrable crime, he implored the arm of the Law [222] and had his wife and Caponsacchi arrested by the authorities [226] of the place. And at his own instance they were conducted as prisoners to the prisons [255] of the Most Illustrious Governor of Rome, before whom Guido charged them with flight. Then, not content with this, he brought forward that other charge of supposed adultery committed with the said Caponsacchi.[269] He also outdid himself greatly by making noisy petition to the Supreme Pontiff [280] for their punishment, and the latter sent back [281] his entreaties to Monsignor the Governor. He was brazen enough to demand, with a new complaint, that his wife should be declared an adulteress and that to him, according to law, should pass all the gain of the dowry.[46] This in substance clearly proves that he did not insist on vengeance for the reparation of his honor, which he himself had passed by, but he did all this for the sole object of gain, that is to win the dowry.[46]

What efforts, what exclamations, what diligence did Franceschini and Abate Paolo, his brother, not use to have the wife declared an adulteress and to gain the desired lucre? [46] Monsignor, the Most Illustrious Governor,[270] knows it, who endured with all forbearance their passionate pressure upon him. Signor Venturini,[270] judge in the case, knows it. And all the other judges and notaries of the Court, who were nauseated by their importunity, know this very well. Then since judgment could not in any event fall according to the designs of the Franceschini, as there was no proof in the trial of any offense, either in the wife or in the said Caponsacchi, the most Religious Judges, who in prudence were judging rigorously [ccxvi] (for the purpose of giving some satisfaction [279] to the Franceschini brothers in their strong insistence, rather than because of the obligations of justice), banished the said Caponsacchi to Civita Vecchia for three years.[271] Caponsacchi straightway obeyed this sentence and has never left the place assigned him.[293] The case was left undecided as regards the wife who was placed in the Nunnery of the Scalette as a prison.[276] Then when there was some question as to her pregnancy,[283] with equal prudence, she was removed from the nunnery by the order of the Most Illustrious Governor; for it was not decorous that she should give birth to a child there. And with the consent of the said Abate Paolo [288] she was placed in the home of the said Comparini under security of 300 scudi to keep it as a secure prison.[284]

On this point the Anonymous Writer disputes too bitterly what was written learnedly by the Fisc, and claims that the consent of the said Abate Paolo had not been given. But the great and incorruptible integrity of the Fisc is known to everyone; because of which he would be unwilling to give his word in writing for what was not evident on the surest proof. Yet the fact of Abate Paolo's consent is plainly proved, since he in person so agreed with Monsignor, the Most Illustrious Governor,[270] and with Signor Venturini,[270] the judge, jointly. And he exacted from Pietro Comparini the obligation to supply her with food [287] without any hope of recompense. And this was so carried out, although the quality of the Comparini did not deserve so indecent a rebuke, on account of having been too indulgent with them.

With like bitterness it is denied that the said Abate Paolo had power of attorney from Guido, his brother, enough to give such consent; because, in making such a provision, Monsignor the Governor had no need of the consent of the parties. And, even if he had wished to show Abate Paolo such courtesy and urbanity, the Author should not reply thereto with such incivility, in criticizing the judge for having done wrong because of the lack of that power of attorney. For by such procedure [Abate Paolo] proves that he wished to trick also Monsignor the Governor into consenting to a thing beyond his power. And he rests convicted of this, because the said Abate Paolo was the manipulator of all they did, nor was a straw moved without his assistance.[50] And he was well provided with abundant power of attorney by his brother, **[ccxvii]** wherefrom he had the fullest authority to do as if he were the very person of his brother, with a proviso of after confirmation, the efficacy of which everyone knows. And this is confessed even by the Anonymous Author, since he asserts that Guido at his departure left the entire conduct [256] of his case to the Abate, his brother. But one may well see with what object he denies the said consent, that is, in order that he may more bitterly make pretense of the complicity of the Comparini in the pretended dishonesty of Francesca, who had been guarded by them as a daughter. This would seem very improbable if he should once admit the consent of the Abate.

No less rancorous is the assertion made by the Anonymous Writer that Lamparelli laid out the money to provide Pompilia with food while she was in safe-keeping.[282] Nor was Lamparelli reimbursed by the deposit in the Office, which had come from the money found on her and on Caponsacchi, when they were arrested at Castelnuovo, which was supposed to have been stolen from the husband. But the 48 scudi, which the wife confessed to have taken away from him, were fully restored to the said Abate Paolo, as is proved by his receipt, made during the trial. The rest of the money was conclusively proved to belong to Caponsacchi. And as soon as Abate Paolo received the

money, for which he continually clamored, he left Rome to take part in the planning of that notorious murder,[304] which followed a little while later.

But there had previously been given notice, at the instance of Francesca Pompilia before Monsignor, the Vice-Governor,[268] of a suit for divorce [266] and for the recovery of the dowry,[267] which had been spent. This was very bitter to the Franceschini, because in that lawsuit conclusive proof would be made of their subterfuges, their cruelties, their threats of poisonous drugs [133] that had been prepared; of which the Canon Conti,[35] who was the mediator in that flight, had not been ignorant. And it is public talk and report throughout Arezzo that he died about a month ago [36] under similar suspicious circumstances. Hereby ceased all hope, which the Franceschini had had from the beginning, of gaining the entire property of the Comparini.[46] And from this every sane mind may see and know what is the true root of such rash and pitiable murders; whether it is injured honor, or scandalous and detestable greed and cupidity.[46] From this arose the hatred in the lawsuits brought and still undecided, which drew even greater dishonor upon the said Franceschini, and when decided would be for their ruin.

[ccxviii] In vain therefore this Anonymous Writer and his other defenders wear themselves out in exaggerating the plea of injured honor. For then that which had no true existence would have been taken from Guido by his wife. This was fully proved in the arguments made for the Fisc, in answering those letters,[232] from which Guido drew his strongest proof. On the contrary, Franceschini has by his own deed renounced all right to repair his honor,[223] since he did not avenge it at the time of overtaking her in the said inn of Castelnuovo. Nor does his excuse really help him—that he was unarmed, because he had with him indeed a sword,[204] and possibly other concealed arms. For it is not probable that he would have been willing to go on following his wife accompanied by Caponsacchi, without being provided with arms. And this all the more because the fugitives also were unarmed and were provided merely with a little dagger.[221] But Guido preferred to chose the judicial road [222] and had them arrested by the police,[229] and he demanded that the charge against them be pushed through to their punishment, even imploring the rescript of the Supreme Pontiff.[280] He also laid his entreaties again before the judges in the case (this very well discloses his purpose, which was the unconquerable motive of all his acts) and made special insistence before them for the payment of the price of the honor, which he pretended had been taken from him. And would he not even have had his wife declared an adulteress for the sake of gaining the dowry? [46] If then he has, as one may say, demanded the price of his honor in the Courts, how can he be permitted to commit such awful murders for honor's sake?

For whenever a husband is permitted by reason of natural law, or even by the civil law, to kill his wife for honor's sake, this power and faculty ceases whenever the husband has renounced it by imploring, as above, the arm of the law. And these complaints that he made, and his recourse to the Pope,[280] show the price he put upon his honor. And with these judicial proceedings he lost, without doubt, his right of private vengeance for his injured honor, which he might have carried out. And by this one tacit renunciation this right is extinct. [Citation.] For the Writer can not claim that the judicial action brought by Franceschini would not effect the renunciation of private vengeance [ccxix] for his honor, but that he could still employ the one or the other, and avail himself of whichever might seem better to him. For this is contrary to the text [Citation] which is stated as follows by the celebrated Canonist, Giovanni Andrea: "A choice can not gain both alternatives in seeking confirmation therefrom; even if the one is claimed to include that by which the man can attain the end of his intention. Therefore a man must chose one, and when it is chosen he can not turn to the other." And still clearer are the following words of the same authority: "The right to return to a second alternative shall not at all be allowed, when one seems to have renounced to choose the first and to profess that his rights can not arise therefrom."

But although this exception from every miscarried law might be judged permissible, every foundation of it would be destroyed by the utter lack of proof of an offense received in his honor; for there was no proof of it in the prosecution for flight. The Anonymous Writer strives to deduce that from the pretended love letters [232] written to Caponsacchi, which were denied by Francesca and were not proved to be her handwriting, either by her own acknowledgment or by her signature. One can not claim that she was convicted of it, nor that any legitimate proof of it resulted, as all judicial practice shows.

And even if without reason we were obliged to acknowledge that they were written by her, would it not be too bitter and too unreasonable an inference that from them arose the husband's motive for killing her because she had written them? No one of sound mind will be persuaded to pity the husband who has gone on to kill his wife for the sole reason that she had written love letters. For conjugal honor is offended neither by note, nor by pen, but only by acts of impure dishonor; and of this, in our case, every shadow of proof is lacking.

This is all the more true because the mere suspicion of dishonor ceases with a thought of the true motive, for which the letters were written;[247] namely, by pretended demonstration of affection to allure this Caponsacchi to rescue her from imminent peril of death. Nor from this could she find any other escape than by flight; for she was always terrorized by the anger and hatred conceived by her husband for

feigned reasons. [ccxx] And therefore, as the love letters arose from that occasion they ought to be referred to it, and not to a dishonorable wish to smirch her conjugal faith to her husband. To the same cause, likewise, should certain conversations be referred, which she had had from the window with the said Caponsacchi in order to arrange the manner of saving her life, and not to give offense, nor to hazard her own modesty, nor the honor of her husband. Even the most chaste of women have used like artifices. We find in the Sacred Scriptures that Judith [426] entrapped Holofernes in the same way, for the purpose of winning the liberty of her native land. And so it may be no less permissible for this poor woman, who was solely intent upon the security of her life, to allure Caponsacchi [247] by amatory letters to be a safe companion for her in her flight, and this without any stigma of immodesty.

Much less can an offense of his honor be inferred from the flight; because, as I noted above, this flight resulted from the cause declared. And one may see clearly that it was not for doing any injury to her husband. For the fugitives did not turn aside into unknown places,[203] but they journeyed precipitately along the consular road by post, without spending the night anywhere.[194] And their journey was toward Rome, where the poor wife hoped that the Comparini, who had raised her as their daughter, would continue toward her those acts of love with which they had brought her up, even till the said marriage was contracted with Franceschini.

And all that is being reported that a driver testifies he had seen them kissing [206] along the road has no legal foundation. For it rests merely on the word of a single witness of the lowest class, and he swears to matters that are quite improbable, because he had to drive the carriage with such rapidity as that with which the fugitives were following their journey. Hence it was almost impossible for him to look backward, or to see what they were doing inside of that covered carriage. And this is all the more so because his deposition is vague, nor does it specify whether the kisses were given at night or by day. But his deposition is rendered much more doubtful and improbable because, in such a swift journey as the carriage was making, it might chance during the jolting [209] of it that the accident of their faces meeting casually would arise, and to him this might seem the act of kissing. This happens very commonly, even when one is making no such journey, according to the quality of the road and the rough ways which one finds. This makes his [ccxxi] testimony insufficient and doubtful enough or, even further, it is audacious and incredible.

Then as to the other point which the Anonymous Writer asserts too bitterly, namely, that when they arrived at Castelnuovo the innkeeper was ordered to make up only one bed for the repose of the fugitives,

and that they slept together.[215] The host, however, did not have the hardihood to swear, in his cross-examination, that they had slept together in it. This circumstance is excluded by the deposition of the wife as well as by that of Caponsacchi. Because their affidavits constantly affirm that neither of them went to bed for rest, but that merely the wife, who was worn out by the discomfort and suffering of so precipitate a journey, rested for a few hours seated in a chair; and that the bed was left arranged as the host had adjusted it; and it would have been found mussed, if they had slept in it. It is also proved that when Franceschini arrived at the said place he found Caponsacchi urging that the horses be harnessed for continuing the journey,[219] and no proof is given to the contrary. Nor can one justly pity Franceschini for his injured honor, which had been kept intact by the fugitives.

Likewise the title,[274] to which the same Writer appeals—that the decree of condemnation for Caponsacchi's banishment had been inflicted because of criminal knowledge,[271] to the injury of Guido's honor—has no real foundation; because this title was corrected as untrue, and not in accord with the proofs. Of this fact we may have as legitimate witnesses the very Governor himself, and all the judges and notaries of the tribunal who have any part in the criminal court. And if one will only give it due thought, the title of that case was placed there, just as a wine bush [275] hangs outside the door of an inn, which very well shows that they sell wine there, but does not prove whether what they sell is good, and salable, and agreeable. Oh! by no means. For one may find the wine there to be sharp, and muddy, and of other inferior qualities. If therefore we read the documents and the proofs registered during the prosecution, by which the crime is proved, and not by the erroneous title, which can not offer a shadow of proof for the pretended criminal commerce, there is even less suspicion of immodesty. And one can well understand that all proof was lacking during the prosecution, **[ccxxii]** from the mildness [272] of the penalty inflicted, which does not at all correspond with the gravity of the crime charged. One can also see the impropriety of condemning Caponsacchi as an adulterer [271] while the cause against the wife was still pending;[276] because she could not be condemned while undefended.

But to remove every suspicion of this pretended adultery, I beg any dispassionate reader to reflect that the adultery could not have been committed in Arezzo, because to the guardianship of her husband was added that of the brothers, of their common mother, of the servant, of the relatives, and of the neighbors; yea, the voluntary imprisonment [127] of the unfortunate child, who was always shut in a small room to guard her honor. Much less could adultery have been committed during the journey, as has been proved to be utterly unlikely, improbable, unproved, and far from the truth. Nor could it have been committed at

Rome; for it is well known that Pompilia was taken from Castelnuovo to prison,[255] and from there was removed to the Nunnery of the Scalette,[276] and then because of her pregnancy [283] was consigned to the said Comparini, under the form of keeping their house as a prison with security of 300 scudi.[284] Caponsacchi also was staying then at his place of banishment in Civita Vecchia. In this fact all suspicion ceases, since the consent of Abate Franceschini,[288] who is so zealous for his brother's honor, as well as his own, concurred therein.

Nor can one restrain himself without strong exertion when he hears such exaggeration from the Anonymous Writer as that Caponsacchi left his prison to go in banishment to Civita Vecchia at a time when the wife was staying in the house of the said couple, as a prison, and that he lodged [293] in their house. But he can not speak a more barefaced lie than that, because Caponsacchi has never been their guest, and as soon as he left the prison he went to the place of his exile; and he has faithfully observed his banishment without ever returning to Rome. Nor did the wife leave the nunnery before it was proved to Monsignor the Governor that Caponsacchi was staying in Civita Vecchia, as was established by the authentic testimony of the Chancellor of that district.

The said Writer, however, gives me even more room to blame his excessive boldness in stigmatizing the honor of Franceschini as sullied by his wife, by saying that as soon as Guido had ascended the stairs in company with his fellows, armed to commit this execrable murder, he looked about upon those walls,[322] which were all full of his insults, as if the said silent stones [ccxxiii] had known how to make contrivances of foolish thoughts to foment his inhumanity for so horrible a murder. Because for this he can give no other proof than that he was writing fancifully without any foundation. For Guido was indeed willingly dishonored; because to his other dishonors he added these disgraces also, even by his own wrongdoing. For it is made very clear above that the cause for which he committed the crime was not to repair his honor, which had been injured by his wife. But it was his unmasked tricks, the hoped-for lucre,[46] which had vanished, and the lawsuits still pending.

And why can he not bring some other no less convincing proof, if honor urged Franceschini thereto? And was not that honor sufficiently avenged by the death of his wife? Why imbrue himself straightway with the blood of Violante and Pietro,[401] who were not accomplices in the pretended dishonor? And why should he lay such plots through many days to procure the death of that kindly benefactor, because the latter had been moved by pity and had ministered to their aid in the said lawsuits? Upon that one there has never fallen a suspicion prejudicial to Guido's honor. For while the wife was in Arezzo he was staying at Rome. And when she was first married she was not fully thirteen

years old, and after her flight, when she had returned to Rome, we know that she continued under guard in prison, or in the nunnery, and then in the home of her parents, and at this time she was very near her confinement. Hence one can conclude truly that the motive of this murder was other than that of honor, and that it was his greed,[46] as was said, and the lawsuits,[421] as Franceschini himself confesses in his cross-examination.

Nor ought the declaration made by the said wife in the face of death be despised, since in the presence of many priests and persons who are quite trustworthy, even while she was constantly suffering from such severe wounds, she maintained and professed with greatest frankness that she had always lived chaste and faithful to her husband.[355] And with a heart in fullest resignation to the Divine Mercy, she prayed pardon for every mistake she had committed to the disgrace of her husband. Nor in such a matter is it to be presumed that the one dying lies, at the risk of the eternal safety of her soul.[362] A person should also reflect that in this deed there occurs a special favor [348] from the hand of the very Omnipotent, who caused the wife to survive for a few days, in order that she might [ccxxiv] make clear her own innocence and throw light upon the murderers; for without this the crimes would have gone unpunished. For during the same crime Franceschini had repeatedly commanded his companions to see if she were quite dead. And when they had taken her by the tresses,[327] and had lifted her from the ground where she lay, they believed she was dead; because the poor wife, by natural instinct,[329] knew how to feign it by her relaxation, as the delinquents confessed. And this mark of divine favor [348] all the more verifies the declaration of the wife, which has been proved by the confession of those guilty of the crime.

I have left it for the last to discuss and refute what the said Writer pretends concerning Abate Paolo.[305] But if he had to speak the truth, he might reasonably affirm that the Abate [50] had been the whole foundation of this scandal. For he had urged Guido on to the murders, and he had woven the whole plot, inasmuch as it was he who, from the beginning wished to attain, by dint of industry and trickiness, the marriage of the said Francesca Pompilia. It was he who had sustained the suits, both civil and criminal, and he who, under the name of a grandee and by boasting of their word of honor, had tried to extort a judgment by means of fine insinuations, by subterfuge, and by trickery; which was not right. It was he, who was very sensible of having been proved to be the man of guile, who had been deluded by his own trick.[108] Therefore this Writer had good reason to say that the faces of others served the Abate as mirrors by which to read his own evil courses, and not the lost honor of his brother.

I forbear to respond to what the Anonymous Writer has tried to have believed to the praise of Abate Paolo Franceschini, to excite greatly our pity; since the intention [59] of the author of the present response is no other than to make clear the falsity of the suppositions against the honor of the poor wife and against the Comparini, and to serve the cause of justice. And he leaves the judgment of it to those who have full knowledge of it. From the same consideration I pass over responding to the many other improprieties, which have been advanced uselessly and without any point by the said Writer.

And I close my response with the example of Samson, alleged by him. When he saw himself exposed to the public scoffs of the people, he gave a shove to the pillars of the palace, causing it to fall that he might die with the rest under its ruins, [ccxxv] and might cease to be longer the scorn of that people. So lest the said Franceschini may be ridiculed for his tricks, it is fitting that he and his companions pay the penalty merited by their crime. For these are pernicious to the State and to that peace and security which litigants in the Courts of Rome ought to enjoy, if we would maintain what the vigilance of the Supreme Pontiff Alexander VII, and his successors, has provided. For they have published a Constitution as to that, and with it Banns, successively promulgated. The sacred order of such laws should be observed all the more willingly, inasmuch as Guido had chosen the judicial way to vengeance, and the appeals made to the Supreme Pontiff,[280] who is most eager to do what is just,[62] were sent back to his judges.[281] Nor could Guido grieve for this without some pretended injury, as is evident; hence the Anonymous Writer wished to ascribe it to the aggravation by which the anger of Franceschini had been exasperated. This clearly shows with what intent he had broken into such detestable excesses.

[ccxxvi is blank in original.]

[ccxxvii] Romana Homicidiorum.

[Pamphlet 16.]

Most Illustrious and Most Reverend Lord:

I omit further discussion with my Lord Advocate of the Fisc about the communication of his allegations, because the time is brief, and I have professed great reverence for him since my youth. Let me also pass over the claim that when one is arguing about death inflicted by a husband upon his wife, not in the act of taking her in adultery, but after an interval, mere suspicion, however strong, is not sufficient to redeem him from the ordinary penalty of the Cornelian law, but that the clearest proof of the adultery is required, as is claimed by our opponents. Yet we have proved the contrary in our former argument § *quamquam ad hoc.* [Cf. p. xxvi.] And Dondeus, Sanfelicius, and Muta, who were not cited there, hold that it is quite enough if the couple be found alone in some retreat; and No. 3 says especially if the wife be beautiful. [Citation.] See the word of Ovid: "Great is the strife of modesty with beauty, And man keeps eagerly craving it." [Heroides, Paris to Helen.] So in the present case, according to the same author: "By this young and passionate man is she supposed to have been returned still a virgin?" [Heroides, 5, 109.]

At present, we are dealing with a case not merely of clearest proof, but also of notorious fact; because we have a decree of this very Tribunal, by which such adultery was declared.[271] Although the words of this decree have been given in the present information, § *Absque eo quod* [cf. p. cxxvi], yet I wish to repeat them here, because they are so clear: "Giuseppe Maria Caponsacchi, of Arezzo, for complicity in the flight and running away of Francesca Comparini, and for criminal knowledge of the same, is banished for three years to Civita Vecchia."

But I can not pass over what is still claimed—that this decree was revoked—because, as I have said in my information, the truth is quite the contrary; for we have only the fact that, in the mandate for imprisoning the sinning Canon, the repetition of the whole decree, as given above, was omitted, and it was said: "For the cause, concerning which in the suit." These words are so far from showing a revocation that they rather offer confirmation of the said decree, as we have affirmed in our information, § *Nec verum est.* [Cf. p. cxxvi.] The same should be said of the like words furnished by the notary in the bond which Francesca Pompilia executed to keep the home of her father as a prison.[284] This was when she was brought there from the nunnery, where she had been staying securely, on the grounds of her supposed

infirmity,[283] but I may say more truly that it was because of her pregnancy, which she wished to hide by some evil deed.

[Our claim is all the more true] because this pretended revocation of the decree could not be made when the other side had not been heard, as I have said in my information § *Eoque magis.* [Cf. p. cxxvii.]

[ccxxviii] Likewise I can not pass over what is said as to the Canon having been condemned only to the penalty of banishment [271] because of defect of proof [273] of adultery. For if such proof had not existed, how could my Lords Judges express in the decree that they condemned him for criminal knowledge of the same Francesca Pompilia? It is the truth that the judges held that the said adultery was most conclusively proved, and that the said Canon was convicted of the same, since in the prosecution nothing is wanting but the taking of them in the foul act; and this is not necessary to prove adultery. [Citations.]

The penalty to which the said Canon was condemned did not indeed correspond with the said crime.[272] As to this many replies may be made, but, because this has no connection with Count Guido let it also pass by. For however that may be, who can deny that Count Guido, on reading the said decree, which needed no comment, ought justly to be angered for the conjugal faith violated toward himself? And who can deny that he ought to be somewhat excused, if afterward he took vengeance for such a violation? [Citations.]

And this is true, although he took such vengeance after an interval, as was plainly demonstrated in my said past information, § *nec verum est.* [Cf. p. xxvi.] For there are few authorities who hold the contrary, and therefore it would be almost heretical to doubt the truth of such an opinion. [Citation.] Especially since this has been accepted in almost all the tribunals in the world, especially in that of the Sacred Council, which establishes the precedent for all the other tribunals of the City and of the entire Ecclesiastical State. Hence Concioli affirms that it is almost like sacrilege to depart from this opinion. [Citation.]

And is it not a fine pretense to wish to exclude the plainest proofs of adultery by the word of the very wife convicted of it, and then retained in the nunnery by reason of it, as my honorable Lord Procurator General of the Fisc has ingenuously acknowledged? For a person is not obliged to disclose his own baseness in the face of death, as we have proved in the said present information, § *Et quatenus* [cf. p. cxxx], and the § following. And since she had lived badly, not to say in utter baseness, to the injury of the honor and reputation of her husband, we inflict no injury on her by wishing to presume that even in death she did not come to her right mind, according to the saying: "He who lives badly dies badly." And no one, even in death, is presumed to be a Saint John the Baptist, as in my information § *Nec valet dici.* [Cf. p. cxxxi.]

As therefore it remains firmly established that Count Guido had just cause for killing, or causing to be killed, Francesca Pompilia, [ccxxix] his wife, the same must be said as to the murder of Pietro and Violante,[401] the father-in-law and mother-in-law. For in the prosecution of the said Francesca Pompilia for flight from her husband, proof also came to light that they had conspired in that same crime, and consequently were among the causes of the injured honor and reputation of Count Guido. And this injury to his honor had also resulted from what they had pretended and had exposed before everyone—that his wife was not their daughter, nor legitimately born, but was the daughter of a harlot.[105] And afterward they had received her into their home when she had been declared an adulteress. For either she was their daughter, and they ought not to deny it in Court, or else she was not their daughter, and they should not receive her into their home after she had been convicted of adultery. For in doing so they had, by that very act, declared that they had been and wished to be her panders. [Citations.]

The confession of Count Guido can not be divided from its qualification, that he had demanded the murders for honor's sake. But it ought to be accepted by the Fisc along with the said qualification, as we have proved in our information § *Huiusmodi enim confessio.* [Cf. p. cxxix.] The authorities alleged to the contrary by my Lord Advocate of the Fisc hold good in a qualification, extraneous to the confession itself and which is not therefore proved otherwise, and when there is argument for some extraordinary penalty, and we have admitted this in our information § *Præsertim.* [Cf. p. cxxx.]

But just as the plea of injured honor relieves Count Guido from the ordinary penalty for murder, so should he be excused from certain other ordinary penalties, laid in the Banns and Apostolic Constitutions against those bearing prohibited arms [413] or committing other crimes. For I have said, and I repeat, that the just anger which excuses him from the one crime should also excuse him from the others, since this reason is everywhere and always in his favor, that he was not of sound mind,[494] according to what was affirmed in our information from § *Agnoscit Fiscus* [cf. p. cxxxiv], down to § *Quo vero ad litem.* [Cf. p. cxxxvii.]

And just as this cause is enough to gain for Count Guido a diminution of the penalty, so should it be considered to be sufficient likewise to gain that favor for his fellows, who as auxiliaries can not be punished with a greater penalty than the principal himself, according to almost innumerable authorities, and they of great name, who were alleged in my past argument, § *Quæ dicta sunt* [cf. p. xxxvi], with the following, and in my present argument § *Verum et Sociis.* [Cf. p. cxxvi.] To this, no response has been given by the other side.

This is all the easier as regards Blasio Agostinelli,[315] who has not at all confessed that he killed or wounded any one, but only that he was present, as we have formerly considered the matter in our information § *Quoad Blasium.* [Cf. p. cxxxviii.]

And as to Domenico and Francesco, beside what has been deduced in favor of the others, they are foreigners,[423] and are therefore not bound by the Banns of the Governor (for by these, men who live outside of the District are not bound) **[ccxxx]** nor by the Apostolic Constitutions prohibiting the bearing of arms,[413] as we have said in our past argument § *Quae eo facilius.* [Cf. p. xxxix.]

This is all the more so since Domenico still asserts that he is a minor,[423] [424] and for this purpose he was so described in the Prosecution, page 304. And as regards Francesco, beside the abovesaid description in the same prosecution, page 35, we have the baptismal register, which conclusively proves his age. [Citations.] For he was born the 14th day of February, 1674, from which it is evident that at the time of the commission of the crime, which is to be had in regard for punishment, [Citations] he had not completed the twenty-fourth year of his age.[424] And to one less than twenty-five years old the penalty should be diminished, etc. [Citations.]

And this indeed is of necessity, and not at the discretion of the judge, because such diminution of penalty arises by advantage of law that has been passed and from intrinsic reason, diminishing the penalty. [Citations.]

Although there are not lacking some authorities who think the contrary, namely that it all depends upon the discretion of the judge, yet our opinion is the truer and the more generally accepted in criminal causes which are not very atrocious. [Citations.] And when the crime is merely savage, or more savage, the judge is obliged by the very necessity of his duty to diminish the penalty, according to those authorities recently alleged. [Citations.]

This opinion also has a place in the crime of murder, notwithstanding the order of the text. [Citation.] "If any one should make you a defendant under the Cornelian Law, it is suitable that your innocence shall defend and purge itself by your minority." For the order of this text should be interpreted thus, namely that a delinquent who is a minor is **[ccxxxi]** not to be excused entirely, but is only to be punished more mildly, according to the old authorities who are cited with abundant hand by Farinacci. [Citations.]

This is especially so when, as in the present case, the delinquent minor does not sin alone, but in company with others; for then he is presumed to be seduced by them, and therefore the ordinary penalty comes to be diminished the more readily for him. [Citations.]

We do not know whither the Fisc pretends to turn for the destruction of these foundations in law, because my Honorable Lords, the counselors of the Fisc, have claimed nothing as to this matter, either in their past argument or the present one. For when they claim to escape our exception by the Florentine Statute, [Citation] that a minor of sixteen years is punished criminally, other responses are at hand:

First, that the provision of this statute does not extend to crimes committed outside of the territory of the said State, but that the place of the crime and its statutes should be attended. Then these indeed cease, as they do in the present case, because the Banns of the Governor have no place when there is argument for the punishment of a foreigner. This fact arises from defect of power in the Prince or official establishing them, according to what was alleged in the past argument § *Quae eo facilius* [cf. p. xxxix], and the one following. For then the criminal should be punished according to common law. [Citations.]

The second response is that the statute says nothing else than that a minor of sixteen years can not be punished with the ordinary penalty of the crime. Consequently it ought to hold good in our case, since we are indeed arguing about a minor exceeding sixteen years, but of one less than twenty-five years old. Such a rule should be drawn from Common Law, in view of which the said statute in such a case receives a passive interpretation. [Citations.] Caballus testifies that he saw it so practiced in diminishing the penalty to one less than twenty-five years, that is to one who was eighteen years old. [Citations.]

Finally the third response, and the one that lays the ax to the root of the tree, is that the Accused is not of the city of Florence, nor of its territory, but of the territory of Arezzo. But the city of Arezzo **[ccxxxii]** and its dependencies are not bound by the statutes of Florence; first because they are not called subjects, but vassals, of the said city of Florence; and, second, because the city of Arezzo has its own statutes. [Citations.] For reference is had to the ruling state, when other subject states have not their own statutes; but it is otherwise if they have them. [Citations.]

And so they are contrary, or incompatible. [Citations.]

Soccinius [Citation] bears witness of what manner these statutes of Arezzo are, as compared with those of the city of Florence, etc., and this is plain from the Rubric, etc., where it is commanded that those under twenty-five years can not be rendered liable, without certain ceremonies, as Paolo di Castro counsels. [Citation.] For from this statute it is sufficiently evident that in the said city and its environs a less age is the rule according to common law.

So far as the Fisc may have foundations, which in our feeble judgment we have been unable to guess, I pray that these be kindly communicated to me, lest the poor accused minor may remain undefended.

Finally, as regards Count Guido, I pray that notice be taken of the unfortunate condition of himself and of his noble family. For all of his family and connection have had enough to lament even to the last breath of their lives, when they look upon the ignominy brought upon them by this woman and her parents. And because of this, there has been doubt up to the very present moment whether one nearly related would go mad. And the excellent piety of our most clement Prince and Most Illustrious Lord has declared this, to whom the Accused himself with his whole heart commends himself in the arguments made in his defense, not to speak of what they may learn about it from the Anonymous Author [Pamphlet 10]. [Citation.]

DESIDERIO SPRETI,
Advocate of the Poor.

[ccxxxiii is blank in original.]

[ccxxxiv] [File-title of Pamphlet 16.]

By the Most Illustrious and Most Reverend Lord Governor of the City in Criminal Cases:

Roman Murder-case.

For Count Guido Franceschini and his Associates, Prisoners, against the Fisc.

Reply as to law, by the Honorable Advocate of the Poor.

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

[ccxxxv] [Letter I.][450]

To the illustrious Signor, my most worshipful Signor and Patron:

Too late have arrived those proofs, which were sent to me by your Honor, on behalf of Signor Guido Franceschini of blessed memory. For when the Congregation of Monsignor the Governor had determined, in spite of the reasons given in his favor, that Signor Guido was guilty under the death penalty, I obtained, with much trouble to myself, some delay for proving his clergyship [42] alleged by me. To this end a messenger was dispatched to Arezzo. But since the Sanctity of Our Lord [the Pope] did not deem it wise to postpone the execution of the sentence already decreed, he has seen best by special writ [430] to make denial of any clerical privilege, which might have been claimed [in Guido's favor], and also as regards the minority of Francesco di Pasquini, one of the accomplices. Hence sentence against all five has been executed to-day, with distinction only in the manner of their death, as Guido's life was ended by decapitation. This consolation survives for his relatives and friends, that he has been pitied by all men of honor and by all good men. Confessing my own shortcomings, I can not deny feeling infinite regret, as I attribute the whole outcome to my inability in offering the valid grounds. May God reward his house and all his friends with abundant blessedness for this tragic accident. Desiring your further commands I reaffirm myself as ever

Your Excellency's most obedient servant,

Rome, February 22, 1698. GIACINTO ARCANGELI.[375]

To the illustrious Signor, my most worshipful Signor and Patron, Signor Advocate Francesco Cencini,[12] Florence.

[ccxxxvi is blank in original.]

[ccxxxvii] [Letter II.][540]

Most Illustrious and most honorable Signor, my most Worshipful Patron:

The proofs you send did not arrive in time, because to-day finally, after so many disputes, the execution of poor Signor Guido has taken place, with the loss of his head, while the four cutthroats have been hanged. The case was decided Tuesday,[432] but because his clergyship was adduced, and on this ground it was claimed that the death-sentence had no place against him, a messenger was despatched to Arezzo later on to get proofs of it. But the Pope yesterday issued his warrant, and ordered that it be carried out completely to-day. Now that the will of God has been fulfilled that he should suffer such a punishment, it has at least been brought about, in view of the arguments made in his defense, that he died the death of a gallant man. For aside from the fact that he has died with exemplary courage,[439] he has also been pitied by all gallant men,[448] and his house has lost nothing in the matter of reputation.[449] All Rome was there,[447] as you may well believe. And

it has not been made good with all that has been written, and there have not been lacking admonitions of greatest consequence, since the Ambassador of the Emperor [429] spoke of that point on Tuesday, as he himself told me day before yesterday. And then the matter [ccxxxviii] was settled precipitately.

I have finished the argument before the Congregation of the Council, and at any time that Monsignor Secretary wishes to take it, I think we shall be ready. I pray you favor me with those copies of the process as soon as possible. And if Canon Philippo does not give us the opportunity, he should be good enough to acknowledge it to me that I may think of other measures, wishing once for all to get out of this imbroglio if it shall be possible. And finally, I remain with all reverence,

My most illustrious and most excellent Signor,

Your devoted and obedient Servant,

Rome, February 22, 1698. GASPERO DEL TORTO.

To the most illustrious and most honorable Signor,

My dear Signor, Signor Francesco Cencini,[12] Florence.

[ccxxxix] [Letter III.] [541]

My most illustrious and excellent Signor, my most worshipful Patron:

Tuesday [432] this most unfortunate case was brought up and the Congregation of the Governor decided—Delay and according to instructions. The instructions were that they would await the proofs of the well-known clericate.[42] At this favorable decision the defense took heart and Guido's good friends began to breathe again.[428] Then last evening at eight [431] o'clock Monsignor signed of his own accord the warrant, in denial of the clergyship so far as it might be alleged and of the minority of one of the accomplices. No sooner had he signed the warrant than the news of it sped throughout the City, and with it the assurance of the sentence, which has been executed to-day since dinner against the five; that is, the loss of his head in the case of Signor Guido, and the gallows for the other four accomplices. I will not tell your Excellency my own grief, because you yourself will be able to be a true witness of it. These proofs would have been of the greatest relevancy, but not in the present case, because Monsignor wished it so.

I inclose the Fisc's argument,[12] except a single response, which I will send to you as soon as I can lay hands on it, that your Excellency may have the entire case.

Now that Signor Advocate del Corto has abandoned his present interests I may serve your Excellency in the matrimonial case [ccxl] and in the other of Gomez.[451] Therefore I set myself to all that your Excellency shall write, praying evermore your continual commands, that I may ever be your Excellency's

Obedient and humble servant,

Rome, February 22, 1698. CARLO ANTONIO UGOLINUCCI.

[Pamphlet 17.]

Most Illustrious and most Reverend Lord:

In the contention most sharply and most learnedly carried on between the Defenders of the Poor and the Fisc in the case of the murders committed by persons led by Count Guido Franceschini against the person of Francesca Pompilia his wife, and Pietro and Violante Comparini, I refuse to descend into the arena, lest I may seem to fail in the office which I discharge in common with the said Defenders. My silent pity has delayed and let time slip by; because I believed it would be to the prejudice of Guido and his fellows imprisoned for that offense, (in whose excuse the plea of injured honor is especially strong) if I should wish to push the defense (which was committed to me long ago) of the shame and honor of the same Francesca Pompilia; for her tender mind has been stained by no infamy arising from impure lust, and against her the suspicious husband could have made no objection, unless wife-murder had followed, as if from this he wished to prove the adultery merely because he could then kill his wife, and he killed her that she might be believed to be an adulteress.

But now since the case has been most sadly terminated as regards all of those imprisoned (for thus these things terminated which should not have been begun) I begin anew the dispute over that most unfortunate question, and assert most safely (both for the reasons fully given in my argument for exclusion of the asserted rape, which is reassumed gratuitously, and for those more fully gathered by his Honor, My Lord Advocate of the Fisc, in his very learned allegations distributed in both [524] presentations of the case), first that the memory of the aforesaid Francesca Pompilia should be utterly absolved from the crime of adultery, which was unjustly and all too bitterly charged upon her by her husband, and second that declaration should be made by a definitive sentence that she has never violated her marriage vow. And this is in spite of the fact that such insistence may seem incongruous. For although all crimes cease with the death of the criminal [Citations] **[ccxliv]** nevertheless when a crime is atrocious, and of such a nature that it involves in itself a brand of infamy, its memory ever endures. Therefore it is worth while for the principal to vindicate the fame of the authoress from the asserted crime of adultery [Citation]. Peregrini speaks as follows: " The thirteenth case is when the heirs of one dead, for the purpose of purging him from the infamy which works against him publicly on account of crime, wish that [the court] take knowledge of the crime itself, for the purpose of establishing his innocence, for this

is conceded by law." And Boss asserts: "Note that even if death does utterly remove any further penalty, yet the heirs of one who is dead may make a stand for his fame and honor, in order that a declaration may be made about that crime." And Caballus: "For although with the death of the delinquent, a crime may be said to be extinct so far as his own person is concerned, yet the heirs of the accused, in their own interest and to wipe out the infamy of the one who is dead, may petition that the court go on to give an opinion, and that it be declared that the dead one had not committed crime." And he affirms the same under the following number.

And indeed this is not without manifest reason. For just as the Fisc may go further in the investigation of a crime that had been perpetrated during the lifetime of the one now dead, even for the purpose of damning his memory, [Citations] likewise it can not be denied by the principal himself, as the beneficiary heir and successor of the same Pompilia and Pietro Comparini, that inasmuch as her innocence is evident he may insist upon carrying away a sentence of absolution; for in other cases any one at all may have a chance to defend one who is dead. [Citations.]

[ccxlv] And to delay such a judgment it is not right that the flight again be alleged, which the said Pompilia made in the company of Canon Caponsacchi, with whom she was arrested at the inn of Castelnuovo. For to remove that charge it is quite enough for one to allege the judgment of this Most Illustrious Congregation, given under the date of February 18, last past, against Guido Franceschini, because of which he was publicly put to death on the twenty-second day following, notwithstanding the fact that, to avoid the penalty of wife-murder, he insisted solely upon the asserted adultery, which he claimed had resulted from the aforesaid flight from home. All suspicion whatsoever of her dishonesty ceases because of the defenses then made and because, in the very prosecution, there was apparent a very just reason, on account of which the wretched wife attempted to flee thus from the home of her husband. Nor was it for the purpose of satisfying lust with the asserted lover, but that she might go back to her own hearth and there, with her parents, might live a safe and honest life. This cause is very plainly proved by the notorious quarrels [95] which arose on account of the poverty of the domestic establishment immediately after her arrival at the City of Arezzo along with Pietro and Violante Comparini in execution of the agreement included in the marriage-contract.[93] And on account of this poverty the Comparini were obliged, after a few months,[98] to go back to the City,[100] with no small bitterness on account of the deception which they had detected. This is evident from the letters of Abate Paolo Franceschini, which presuppose these complaints that resulted from the said deception, and especially from the letter

written March 6, 1694: "I write again to you that I do not wish to imitate him in his manner of writing, not being of his mind to sow broadcast in my letters such words as would well merit response by deeds, and not by words. And these are so offensive that I have kept them for his reproof and mortification." And further on: "So that if you give trouble, which I will never believe, you yourself will not be exempt therefrom." It is also evident from the letters given in my past information, and especially in § *Videns igitur,* with the one following. And although this does not show the nature of the altercation, yet, since Abate Paolo has not shown the letters written to himself, the presumption presses upon him very strongly that the complaints were just and that the cause of their quarrels and altercations was well founded. [Citations.] **[ccxlvi]**

It is also true that a very bitter lawsuit [260] was brought by Pietro Comparini for the nullification of the dowry contract and for the proof of the pretense of birth, which had been made by Violante, the mother,[103] both to deceive her husband and to bar his creditors,[107] who were pressing him hard at the time.[72] And since the dowry included all the property [91] and the entire patrimony of Comparini,[92] which was of no small value when we consider the rank of the persons concerned, controversy had indeed been raised for a considerable amount by the father-in-law. And this, as experience teaches from time to time, is accustomed to bring forth implacable hatred and deadly enmity. [Citations.] It produced indeed such an effect for this unfortunate wife, so that the love of her husband, which had long been disturbed by the preceding altercations, was finally quite extinct. And this was so to such an extent that she often found herself exposed to deadly peril because of the severity of her husband, who at times pursued her with abuse, and again even with a pistol.[471] And it can not be questioned that such perils are quite suited to strike fear even into any hardy man. [Citations.] Hence it can be much more affirmed of Francesca Pompilia, a girl of tender age, who was destitute of all aid, and away from her own home and her parents. [Citations.] And Mogolon [Citation] declares that the mere sight of arms, even if the one who has them does not use them nor unsheath them, is just cause for fear; and in § 7, *No. 15,* he considers the absence of relatives as a ground for fear. And D. Raynaldus [Citation], **[ccxlvii]** says that it is enough if one sees signs or acts of manifest desire, or such as are preparatory.

Therefore, since so many very relevant circumstances concur, on account of which Pompilia was moved to desert her husband's bed by flight, all suspicion whatsoever of dishonesty and of violated conjugal faith is utterly removed. For whenever we have two causes, one of which is lawful and permissible, while the other is iniquitous and abominable, the former is to be fully received, and thereby the charge of crime

is quite excluded. [Citations.] [And this is true] in spite of the fact that this lawful cause may seem to be excluded [first] by the letter written by Francesca Pompilia to Abate Paolo. For in the letter,[112] after she had thanked Abate Paolo because he had joined her in marriage with his brother, pretense is made that her parents gave her the depraved counsel to destroy the entire home and to go back to the City with her lover; [it also makes pretense] that since their departure she was enjoying a quiet and tranquil life. [Second] from the company of the Canon Giuseppe Caponsacchi, with whom she had fled; because of which he was banished to Civita Vecchia for three years.[271]

For however it may be with the asserted letter, whether it is substantiated or not, and whether or not the qualification should be considered probable, which is added in her sworn testimony by the same Pompilia, namely that her husband had marked the characters [114] and she had blackened them with ink by tracing them with a pen, because she herself did not know how to write; yet it is certain that if the letter be read attentively it will be absolutely impossible to assert that she had written it with a calm mind. For who can be found, so unmindful of filial love and duty toward parents as to persuade himself that this tender girl could have laid upon her parents such detestable crimes? Because at the time she was not more than fourteen years old, according to the certificate of baptism given in the Summary of the Fisc [cf. p. clv], in the second setting forth [524] **[ccxlviii]** of the cause, No. 2. And she was away from her own home and still grieving for the very recent departure of her parents, and was badly treated in the home of her husband, as is clearly shown by the continual complaints and recourse made not merely to the most reverend Bishop,[139] but also to the Lord-Commissioner of the city.[135] Nor is it probable that she would have informed her brother-in-law, who was so very unsympathetic toward her, of these matters unless, as she has frankly confessed in her sworn examination, she was compelled thereto by her husband. Nor without very evident peril of death could she show any reluctance to him because of his excessive severity, which she had very often felt before. And as this improbability is well suited to strike horror into those who read it, so likewise it very well shows that the letter was not written voluntarily,[468] but under compulsion. [Citations.] Caballus asserts that what no sane mind would approve is inadmissible. [Citation.] And indeed such excessive cunning in extorting the said letter from the wife plainly proves Guido's craft, and the fact that the letter was obtained by false pretense, in order that he might quiet the mind of the same Abate, his brother. For the latter had been harassed by continual complaints on account of ill treatment of the wife, and had not ceased to criticize Guido daily for them. [Citation.]

As to her association with Canon Caponsacchi, this likewise does not seem enough to establish the blot of dishonor. For the most wretched wife was utterly destitute of all earthly aid and had vainly entreated the authority of the most reverend Bishop,[139] and of the Lord-Commissioner,[135] to free her from deadly peril; and on account of her age and sex it was not suitable that she should flee alone or in the company of some lowborn serving woman,[148] for in that way she would carelessly expose herself to graver peril, as might have happened to her if she had been overtaken while alone on the journey. For then it could be said of her: " She fell upon Scylla while trying to avoid Charybdis." [523] Therefore we should not be surprised if she took the aforesaid Canon as a companion. For he had been proposed to her by both Canon Conti [145] and Gregorio Guillichini,[146] who were related to Pompilia's husband. [ccxlix] And it is utterly incredible that they would have consented to such a flight if they had not known it was quite necessary to evade the peril of death, which they very well knew was threatening the luckless wife, and if they had not had strong faith in the honesty and integrity of her companion. Therefore, as such a necessity was pressing so hard upon her, her prudent choice of the lesser evil eliminates any shadow whatsoever of her pretended dishonesty. [Citations.]

[This is especially true when we] consider the manner in which the flight was executed, by taking the most direct road to the City with the utmost possible speed. And it very well shows that the sole motive was to save her life, and not to debase herself by licentious delights. For if this latter had indeed been the principal cause, she would not have gone to Rome by the shortest road,[203] where she might immediately be taken by her brother-in-law and her parents, but would have gone to some more distant regions, or else she would not have gone with such swiftness, but would have delayed out of the public highway, and in a place where her husband could not find her, and where she could fulfill to satiety her lust.

This utter improbability therefore very well shows the truth of the cause for flight adduced by the wife in her sworn testimony—namely that she had gone swiftly to the City in order that she might there place her life and honor in safety in the home of her parents. For just as the strongest sentence of blame may arise from mere probability, so likewise no less presumption of innocence should arise from this improbability. [Citations.]

And this is strongly urged by the frank protestation made in the very act of arrest at the inn of Castelnuovo to the husband himself by the Canon, who rebuked him concerning this flight: " I am a gallant man, and what I have done, I have done to free your wife from the peril of death." [220] So testifies Jacopo, son of the former Simon, a witness for the Fisc, in the prosecution for flight, page 50. And an example

was offered by me in my allegation as regards that flight, namely that of Scipio Africanus. [ccl] For when the beautiful young wife of Aleucius, the chief of the Celtiberi, had been captured by Scipio's soldiers, he said in restoring her to her husband: "Your wife has been with me as she would be with her own parents. Her virtue has been preserved for you so that she can be given back to you again, a gift unviolated and worthy of me and you." Titus Livius bears witness to this in his Histories, book 26, and page 493 in my volume.

And although it may be very difficult for a beautiful woman [16] to preserve the decorum of her honor while journeying in the company of a young lover, yet it is not utterly impossible, as the examples seem to show, which were related in my allegation § *Quidquid dicat.* And to these I add that of Penelope, of whom Ovid sings in book 3 of his elegies: [Amores III, 4, 23.] "Although she lacked a guard, Penelope continued chaste among so many suitors."

And this is especially true since neither the journey nor the company of the Canon were voluntary, but were merely for the purpose of avoiding the peril of death. And since such necessity was present, the presumption drawn from Ovid's *Ars Amandi* is rendered still further inapplicable, namely that "From a passionate young man, can she be believed to have returned a virgin?" [Heroides, 5, 129.]

Nor do the letters [232] which were found in the closet [231] of the inn at Castelnuovo seem to stand in the way and hinder the sentence petitioned, and impose a blot of infamy upon Francesca Pompilia. It is claimed that these were written by her to the Canon on account of the very devoted love with which she was pursuing him. But the exceptions and responses made in the past informations hold good. The first is that they were not acknowledged by her, nor was the identity of the handwriting proved; and some uncertainty is still present, since it is not evident to whom they were directed; nor would it be improbable that they might have been framed by the husband.[233] For he was present at the capture and search [231] and hoped, indeed, that therefrom might result more readily the fixing of the crime of adultery. And he insisted very strongly upon this, in order that he might gain the desired dowry and lucre.[46] This mere possibility to the contrary is enough to avoid the proof, which it is claimed may be drawn from them. [Citations.]

[ccli] The second response is that, even though such exceptions as the above might not hold good, yet no proof of violated conjugal faith and of dishonor can be drawn from these letters. For even though proof of adultery may result from love letters, it is utterly excluded in our case when we see that they were directed to a licit end,[247] namely toward soliciting the Canon that he might afford her aid in her flight and that she might avoid deadly peril. For then, just as the end is permissible, so should the means also be considered lawful and per-

missible, even though suspicion is not lacking; for these should be considered, not in themselves, but on account of their end. [Citations.] But indeed, unless from the love letters themselves there result an implicit confession of fornication, proof of adultery can not be drawn from them. [Citations.]

It should be specially noted that she had very strong confidence in her own continence and in the integrity of the Canon. And she trusted him much, and hoped that he would conduct himself modestly during the journey, since it is evident from these same letters that she had found fault with him for his freedom once: "And I marvel that you, who have been so chaste, have composed and copied matters that are so dishonorable." And further on: "But I would not have you do in any case as you have done in these books. The first of them is honorable, but the other octaves are quite the contrary. I can not believe that you, who have been of such honor, have become so bold." For such sincere objurgation and the very tenor of the letters, in which no dishonesty is read, clearly show and declare the spirit of Pompilia, who wrote them. For just as words are to be understood according to the thought of the one proffering them, so likewise should letters be interpreted according to the intention of the one writing them. [Citations.]

[cclii] Since therefore the honor and modesty of Pompilia is vindicated from the flight and the letters, of still lighter weight are the other proofs of pretended dishonor. These are deduced from the approach of the Canon to her home [170] for the purpose of speaking to her; from the insidious manner in which the flight was prepared and put into execution, by means of an opiate [196] administered to her husband and the servants; from their mutual kisses on the journey;[206] and from their sleeping together at the inn of Castelnuovo.[215] For beside the general response that no conclusive proof is offered for all these, such as would be necessary to establish Pompilia as guilty of adultery, there is a separate response for each of them.

The entry and egress at night time [170] into the home of Francesca rests merely upon the deposition of a single witness, Maria Margherita Contenti,[171] who is under two very relevant exceptions: namely those of singleness and of harlotry.[172] Her word therefore can impose no blot of infamy. [Citations.] And since such approach would tend toward the single end of arranging for the flight and rescue of the unfortunate wife from the very imminent peril of death, it should not be presumed to be for an evil end. For when an express cause is plainly present, to which a matter may be referred, and this cause is entirely lawful, the matter should not be attributed to a cause that is illicit and criminal. [Citation.]

The insidious manner, also, whereby Francesca Pompilia put into execution the flight, by preparing an opiate [196] for her husband and all

the household (aside from the fact that it is not proved), would afford proof of sagacity rather than of dishonor, even if it were proved. For the wife would have been very foolish if she had attempted flight without such a precaution.[197]

Under the same lack of proof labors the asserted mutual kissing during the journey;[206] for that proof is entirely too slight, which is pretended to result from the deposition of a single witness of the lowest class. [ccliii] Especially since his word is shown to be too much prejudiced; for he swears that, while he was driving the carriage swiftly at night time, he saw Francesca Pompilia and the Canon kissing each other. Nor does he give any reason, as that the moon was shining, or that some artificial light was present to dispel the darkness. Inasmuch as such a detail is necessary in a witness who is testifying about a deed at night time, its omission takes away all confidence in him. [Citations.] For there is to be added another very strong improbability, namely that, while he was driving the carriage with such velocity that it seemed to fly rather than to run, he could see their mutual kissing by looking backward. Still more is this improbability increased by the very word of this same witness, since he swears that he had driven Pompilia without knowing that it was she, until afterward, while returning to Arezzo, he had met Guido Franceschini, her husband, following her. Because if he had seen her kiss, he would have recognized her straightway, since he had often seen her before and she was well known to him. And therefore it should be absolutely declared that, either influenced by the tedium of his secret prison,[207] he had been compelled to swear so, or, as is more probable, since on account of the very great speed of the carriage the bumping together of those seated therein might chance,[209] he had believed that this chance jostling of their heads and faces was for the base purpose of kissing. Hence the proof arising from his deposition was justly held in contempt in the prosecution for flight. And it would have been considered if it had had any probability.

Finally the proof of dishonor drawn from the asserted sleeping together in the same tavern at Castelnuovo, is far weaker, since it was constantly denied by both Pompilia and Caponsacchi in their testimony. And only a single witness, the house-man of the same tavern, swears to it; and this also not from certain knowledge, but presumptively, [ccliv] because they had asked him for a room with a single bed. Canon Caponsacchi frankly confesses why he had ordered that only a single bed should be prepared—namely that Francesca Pompilia, who was worn out because of ill-health [213] [218] and the discomfort of their precipitate journey, might rest a little, while he himself kept guard.[214] Such an act should not be assigned to an illicit cause, as Cravetta [Citation] advises in such circumstances. And, in No. 15, he says that interpretation should always incline to the humaner side, even when the rigorous

side may seem the more likely. And the same author continues thus in *Nos. 20 and 21.* For it would not suffice as a full proof of adultery that any one be found alone and naked with her alone and naked, and that a young man be found unclothed and with shoes off in a closed chamber with a woman. Much less can such proof arise from a very brief delay in the same chamber for the purpose of keeping watch.[214]

Very slightly does it stand in the way that Francesca Pompilia, in her cross-examination, concealed this delay by asserting that she had arrived at the tavern at dawn.[212] For she was very well aware of the credulousness of her husband, and possibly asserted this to avert further suspicion of violated honor, which certainly might have arisen if she had confessed that she had spent a longer time in the tavern. As even if she had not denied such a stay, the confession under circumstances that still argue for the preservation of her modesty would not have been to her prejudice, so likewise the lie can do no injury. [Citations.]

But all suspicion of pretended dishonor is quite eliminated by the assertion of the most unfortunate woman, which was made in the very face of death, after many severe wounds had been inflicted upon her by her husband. [For she declared that] she had never sinned against her marriage vow,[355] as is very evident from the numerous depositions of religious men,[353] who ministered to her in death. They assert that they heard her continually praying that she might be given no forgiveness by the Divine Clemency for such a sin.[356] This assertion made in the very face of death, **[cclv]** deserves all faith,[362] since no one placed in that condition is presumed to be so unmindful of eternal safety as to be willing to lie. [Citations.]

Finally, no foundation for accusing the memory of Francesca Pompilia of dishonesty can be established upon the asserted decree of this most Illustrious Congregation, by whom Canon Caponsacchi was condemned to three years' banishment in Civita Vecchia,[271] with a statement made of his running away and criminal knowledge of Francesca Pompilia. For, as the Fisc himself admits, there was demanded by me, though not *in extenso,* the modification of that title by the honorable Judges, with the approval of his Excellence the Governor. And therefore, in the order for imprisonment, these words were suppressed and others were put in their place: *Pro causa de qua in actis.*

All further difficulty is removed from the mere consideration that such a decree had been issued, while no defenses had been made for Francesca Pompilia, and while she was still utterly without a hearing. For she had not the slightest knowledge of it, since she had not been notified. But in the decree for the assignment of the home as a prison, only a cause relative to the trial was expressed. Hence it could not injure her, since it was issued against a third party[534] while she herself had not been cited. [Citations.] And in the circumstances that a

sentence given against an adulterer can do no injury to the adulteress when she has not been cited, is the text [Citations]: "If he is condemned, the wife is not condemned thereby, but shall carry on her own case." [Citation.]

This is especially true since we are not now contending to free the husband from wife-murder, and to infer a just cause apart from belief **[cclvi]** in the dishonor of the wife resulting from the said decree, and which would excuse him from the penalty of the Cornelian law. In this case, the changing of the said decree might possibly serve for an escape. But we are contending about the damning of the memory of a woman now dead, and about rescuing her and her family from infamy. And in the latter case just as such a harsh decree could not injure her during her lifetime, so likewise it can not do her injury after her death.

ANTONIO LAMPARELLI, *Procurator of Charity.*

[in old writing]

And according to the letter of Carolo Antonio Ugolinucci, May 17, 1698, I understand that the criminal court after two votes, decided on absolution.

[cclvii is blank in original.]

[cclviii] [File-title of Pamphlet 17.]

By the Most Illustrious and Most Reverend Lord Governor in Criminal Cases, or by the Most Excellent Lord Venturini.

Roman Lawsuit.

For the Heir-beneficiary of the former Francesca Pompilia, formerly wife of the former Guido Franceschini, against the Fisc and Associates in the Lawsuit.

Memorial of Fact by the Honorable Procurator of the Poor.

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

[cclix] INSTRUMENT[456] OF FINAL JUDGMENT.

[Pamphlet 18.]

Given for the restoration[457] of the good name and reputation of Francesca Pompilia, now dead, formerly the wife of Guido Franceschini of Arezzo, now dead; for acquittal in favor of Domenico Tighetti, as an heir beneficiary of the same Francesca Pompilia, from all disquietude,[364] all molestations, vexations, and perturbations, brought or threatened to be brought by the Venerable Monastery of Saint Mary Magdalene of the Convertites[277] in the Corso; together with the citations lawfully executed in observation of the four terms to instruct themselves as to the appeal and its legal prosecution, in order that the same sentence might pass on, as it has passed on, to judgment, because no appeal has been interposed.

In the name of God, Amen.

September 9, 1698, under the sixth declaration in the eighth year of the Pontificate of the Most Sacred Father in Christ, etc., Innocent XII, Pope by Divine Providence. This is a copy or transcript of the citations made by my own act, and written below, and of the sentence rendered respectively of the following tenor, namely:

The Most Reverend and Most Illustrious Governor in Criminal Matters:[454]

Let the undernamed principals on the other side be cited, etc., to appear in the Criminal Court to-morrow, which will be the nineteenth day of the current month, at the accustomed hour of convening court, lest it seem good that each and all the terms be repeated as ill founded, and that they therefore are to be held and observed as null and void in their force for any powers whatsoever, and lest the one so insisting be freed from censures, so far as, etc., it be concluded, or seem best to be concluded in the case, **[cclx]** and that the final sentence be heard in due form according to the aforesaid insistence by Domenico Tighetti, heir-beneficiary of the former Francesca Pompilia, the wife of the former Guido Franceschini, as Principal, or, etc.

NOTARY FOR THE POOR.

The Most Illustrious Francesco Gambi,[455] Procurator General of the Fisc, and of the Reverend Apostolic Chamber.

The Honorable Giovanni Maria Serbucci, Procurator and Manager of the lawsuit brought by the former Guido Franceschini.

The Honorable Francesco Paracciani, Procurator of the Venerable Monastery of St. Mary Magdalene of the Convertites in the Corso.

Against the Procurator General of the Fisc, etc. He says that no sentence can be given, unless in favor of the Fisc, and so far as, etc., insists that he be granted delay for the purpose, and in the meantime they can not go on to any expediting of the cause, except for reason given in full court, and by the vote of the Lords thereof, and by testimony of the opposition in prison, and without citing all who have interest, etc., this 18th day of August, 1698.

FRANCESCO GAMBI,
Procurator General of the Fisc.

I have made the above citation against the Fisc personally this day, and against the others by copy, which was sent to their homes, this August 18, 1698.

BALATRESIUS.
ALOYSIUS PICHIUS, *Substitute for the Fiscal General.*

AUGUST 19, 1698.

When he had made statement of fact, Antonio Lamparelli, Procurator, presented his case and petitioned as above. Thereupon the Most Illustrious and Most Excellent Lord, Marcus Antonius Venturinus, J. V. D.,[456] [270] who holds the judicial bench, for the Most Illustrious and Most Reverend Governor of our dear City in criminal cases, gave sentence, as in this schedule, which he has taken in his own hands, has seen, read, and subscribed, and given and consigned to me as a notary for publication of the following tenor, etc., in the presence of Antonio Bernardino Piceno and Antonio Toparino of Caprarola, witnesses, etc.

In favor of Domenico Tighetti, in the name, etc., against the Fisc and those consorting with him in the suit.

In the name of Christ, whom we have invoked, we who sit for this Tribunal, and who have only God before our eyes, give this as our definitive sentence, which we offer in these writings by the advice of those skilled in law, in the cause or causes which have been tried before ourselves in the first place, or in the second, and which are now being considered, between Domenico Tighetti, as the heir-beneficiary of the former Francesca Pompilia, the wife of the former Guido Franceschini of Arezzo, on the one part; and the Fisc and Giovanni Maria Serbucci as Procurator and Manager of the lawsuit of the former Guido Franceschini, and Francesco Paracciani, Procurator of the Monastery of Santa Maria Magdalena of the Convertites in the Corso for all their rights and parts in that interest, on the other part; concerning and upon the pretended adultery committed by the said former Francesca Pompilia with Canon Giuseppe Maria Caponsacchi,

and as regards other matters in the conduct of the cause or causes of this kind, [cclxi] more fully deduced, etc. By authority of the decree for the remission of the case, which was made by the Most Illustrious and Most Reverend Auditor S. S., by the acts of Pascasius, concerning which in the conduct, etc., and for cause given in the Court, and by vote of the same, we say, pronounce, declare, and finally adjudge from what has been newly deduced, that *proof is not established as regards the pretended adultery,* and therefore the memory of the same Francesca Pompilia should be and is *entirely* restored to her pristine good name and reputation; and that the same Domenico Tighetti, in whose name the above was deduced, should be and is absolved and liberated from each and all disquietudes, molestations, vexations, and perturbations brought, or threatened to be brought, by occasion of these, as on account of the statement of these we have restored, absolved and freed him, as above. And for this restitution and absolution and freedom, we wish and command that it be held as law that the suit or suits, of whatever nature, which have been brought thereupon be abolished, as we abolish them. And we charge that perpetual silence be imposed upon the Fisc and his consorts in the suit. And we have thus spoken, pronounced, declared, and finally given sentence, not only, etc.

I, Marcus Antonius Venturinus, who hold the judicial bench have so pronounced.

Given on this 19th day of August, in the presence of Antonio Bernardino Piceno, and Antonio Toparino of Caprarola, Witnesses, etc.

By the Most Illustrious Governor of the City in criminal cases, or the Most Excellent Lord Venturini.

Let the undernamed be cited for learning the appeal, and its lawful prosecution for the first time, at the aforesaid instance of Domenico Tighetti, as Principal Heir-Beneficiary of the aforesaid Francesca Pompilia, formerly wife of Guido Franceschini:

CHARITAS.

The Honorable Giovanni Maria Serbucci, as Procurator and Manager of the legal proceedings of the said former Guido Franceschini, as principal on the other side.

The Honorable Francesco Paracciani, the Procurator of the Venerable Monastery and Convent of St. Mary Magdalene of the Convertites in the Corso for all, etc.

I have made the said citation at his home, August 31, 1698.

MOLINELLUS.

September 1, 1698.

When we had made statement of fact, R. D. Alexander Cassar, Substitute Procurator of Charity, appeared, petitioned, and was granted, as above.

By the Most Illustrious Governor of the City in criminal causes, or by the Most Excellent Lord Venturini.

Let those named below be cited for learning of the appeal and its legitimate prosecution this second time, at the aforesaid instance of Domenico Tighetti, heir-beneficiary of the former Francesca Pompilia, formerly wife of the former Guido Franceschini, Principal, or, etc.

CHARITAS.

[cclxii] D. Giovanni Maria Serbucci, as Procurator and Manager of the lawsuit brought by the former Guido Franceschini, as the Principal on the other side.

D. Francesco Paracciani, Procurator on the other side for the Venerable Monastery and Convent of St. Mary Magdalene of the Convertites in the Corso, for all, etc.

September 1, 1698, I have made this.

MOLINELLUS.

By the Most Illustrious Governor in criminal causes, or by the Most Excellent Lord Venturini.

September 3. When he had made statement of fact, R. D. Alexander Cassar, Substitute Procurator of the Poor, appeared, petitioned, and was granted, as above.

Let those named below be cited for learning of the appeal and its lawful prosecution, this third time, at the aforesaid instance of Domenico Tighetti, heir-beneficiary of the former Francesca Pompilia, wife of the former Guido Franceschini, as Principal, or, etc.

CHARITAS.

D. Giovanni Maria Serbucci, as Procurator and Manager of the lawsuit brought by the former Guido Franceschini, as principal on the other side.

D. Francesco Paracciani, Procurator of the other side for the Venerable Monastery and Convent of Santa Maria Magdalena of the Convertites in the Corso, for all, etc.

I made this September 3, 1698.

MOLINELLUS.

September 4, 1698.

When he had made statement of fact, R. D. Alexander Cassar, substitute Procurator of the Poor, appeared, petitioned, and was granted as above.

By the Governor in criminal causes, or the Most Excellent Lord Venturini.

Let those named below be cited for learning of the appeal and its lawful prosecution, this fourth time, and of the final presentation, and the decree, etc., at the aforesaid instance of Domenico Tighetti, heir-beneficiary of the former Francesca Pompilia, formerly wife of the former Guido Franceschini, as Principal, or, etc.

CHARITAS.

D. Giovanni Maria Serbucci, as Procurator and Manager of the lawsuit brought by the former Guido Franceschini as Principal on the other side.

D. Francesco Paracciani, as Procurator of the Venerable Monastery and Convent of St. Mary Magdalene of the Convertites in the Corso, for all, etc.

I have done this, September 4, 1698.

BALATRESIUS.

September 5, 1698.

When he had made statement of fact, R. D. Alexander Cassar, Substitute Procurator of the Poor, appeared, petitioned, and was granted, as above.

I, Domenico Barlocci, Notary of the Court of Criminal Causes of the Most Illustrious and Most Reverend Governor of the City, as Notary for the Poor, have found this copy correct by collating it, although it was extracted from the original documents by one who is trustworthy in my eyes, etc. In pledge of the above, I have subscribed and have published it, as I am required to do.

[The seal of the said Notary.]

The Secondary Source

of

The Ring and the Book

A Contemporary Manuscript Pamphlet.

NOTE.

"The following pages contain a MS. contemporaneous account of the execution of the principal actors in the tragedy which has been immortalized in the poem of The Ring and the Book.

"I am enabled by the kindness of my friend, Mr. Browning, to give it a place in these Miscellanies of the Philobiblion Society."

JOHN SIMEON.

(I shall not attempt to say with what a feeling I correct proof-sheets received on the day subsequent to that which brought the intelligence of the death of this great-hearted and noble-minded man, characteristically good and gracious to the very last.)

R. B., May 24, 1870.

The above words are the introduction by Sir John Simeon and the comment by the poet (Philobiblion Society Miscellanies, XII, 1868-9), on the reprint of the subsequent pamphlet in the original Italian.

It was found in London by one of Browning's acquaintances, who, knowing the poet's interest in the subject, sent it to him. Internal evidence indicates that it was probably written (but not published) some few years after the crime, and it is more popular in style than any part of the Book. The writer during the first half of his pamphlet follows closely the affidavit of Pompilia and the second anonymous pamphlet [No. 15] of the Book. He then adds much interesting information as to the murder and the pursuit, arrest, trial and execution of the criminals. Browning uses almost every scrap of additional information it affords. He accepts its fact with the same fidelity he shows in using the Book, and uses it extensively and without discounting its value as compared with the official record. It is therefore treated as an essential portion of the present source-study. Its new matter will be indicated by italics in the following translation.

Mrs. Orr has published somewhat less than half of the pamphlet in her Handbook in translation, which has been reprinted in the Camberwell Browning, and in the Browning Guide Book by G. W. Cook. The present version is made directly from the Italian text of the Philobiblion Society reprint.

THE DEATH OF THE WIFE-MURDERER GUIDO FRANCESCHINI, BY BEHEADING.

Guido Franceschini, a nobleman of Arezzo[37] in Tuscany, had stayed for some time here in Rome in the service of a person of some eminence.[39] He decided to take a wife with dowry enough to be of advantage to his own house. When he had revealed this desire to a certain hairdresser[78] *near the Piazza Colonna*, she proposed to him the Signora Francesca Pompilia, thirteen years of age, the daughter of a certain Pietro Comparini and Violante Peruzzi. For beside the promised dowry she was heir to the reversionary interest in bonds and other properties worth about 12,000 scudi. When he had heard of this advantageous dowry, which seemed to him to be quite to his point, he lost no time in revealing it to his brother Abate Paolo, who had dwelt here in Rome for many years in the service of a Cardinal. He went along with Guido to the mother[79] of the young woman, as they flattered themselves that they would succeed better in this way than by demanding her of the father, who was somewhat hard to approach. When they had made it appear that their income was of considerable amount, they succeeded in their intent; although it was then found out that their entire capital did not amount to the total of their income, as given in that note.[82]

It was easy for Franceschini to win over this woman,[80] as *she was driven by the ambition of establishing her daughter in the home of persons of good birth.* She gave her own consent, and so worked upon her husband[81] as to induce him to sign the marriage bond. Then when Comparini had been informed by a person who knew the resources of Franceschini, that they were quite different from what they had been represented to him,[83] he changed his mind, nor did he wish under any consideration to carry out the marriage.[84] *He gave as a pretext the very tender age of his daughter*, along with other reasons. The mother of Francesca, however, not seeing any chance to give her daughter to Franceschini, had her secretly *married during December, 1693, in San Lorenzo in Lucina.*[85]

When this marriage reached the ears of Comparini, he was much angered at Violante.[87] But she had such a gift of gab that Comparini not only agreed to it,[88] but beside the dowry of 2,600 scudi,[91] *on which he had already paid 700 scudi, he also made gift of his entire possessions to the couple.*[90]

After several days, Franceschini decided to conduct his wife and her parents back to Arezzo, *and this took place in the same December.*[98] When they had arrived there, the parents of the wife could see that the state of their son-in-law was much worse than they had imagined it.[95] Therefore they were all the more embittered by the penuriousness they showed in the food, and in many other matters. *One morning while they were at the table they heard their daughter denied fire for warming her bed*, and saw the Franceschini practice many other cruelties toward her. They were much troubled at it, and *all the more so when they saw a Canon of the Franceschini household,*[51] *a brother of the husband, rush upon their daughter. He struck Francesca with a dagger in his hand, who had to make her escape by running into a room and shutting the door. Then one evening her father went to visit a friend, and when he had come back home he*

found the door shut. Therefore his daughter, who was still awake, was obliged to go downstairs to open it for him, but not without first having called her husband, who never even opened an eye. Then when she had gone down to open the door and had gone outside a few steps to meet her father, all of a sudden she found herself shut outside the house along with her father. For that reason they were both of them obliged to sleep outside of the house that night, her father at the inn and the daughter at one of the neighbors. Therefore, more and more, as the days passed, the Comparini decided to return to Rome.[100] But as they were without money they were obliged to beg it of Franceschini, who *scarcely gave them the necessary expenses of the journey.*[99]

When the old Comparini had departed, Franceschini thought to hide what had happened. He constrained his wife to write[112] to Rome to the Abate, his brother, to tell him that she cherished in her heart his memory. This letter was dictated by the husband himself. The ignorant girl did as Guido wished, whose purpose was to have it believed that his parents-in-law were the fomentors of the dissension which prevailed between the couple and the relatives of Franceschini.

When the Comparini had reached Rome, ill-contented as they were with the house of their son-in-law, for whom they now saw they had sacrificed their daughter, they did not know how to hold their peace about that matter, of which they themselves had been the cause. All the more so when they were harassed for the remainder of the dowry, beside the fact that they saw the rest of their property in danger. While affairs were in this state a Jubilee[102] was announced; under these circumstances Violante Comparini revealed in confession[103] that Francesca Pompilia, who was married to Franceschini, was not their daughter, but that the birth had been pretended. She had in fact been born of a *poor widow, a foreigner*,[105] and had then been adopted to bring it about that the reversionary interest[68] would fall to their house, and hence to make good the many debts of her husband.[107] *When the confessor heard this, he charged her to reveal all the affair*[104] *to her husband himself. Violante obeyed, and Comparini was greatly surprised at it, and rebuked his wife sharply.* He then submitted the matter to judgment before Monsignor Tommati,[262] and the following was spoken in sentence: It should be maintained that Francesca Pompilia shall be and is in quasi-possession of her relationship as daughter.[263] Therefore appeal[264] was taken by the Comparini to the Tribunal of the Sacred Rota, but the suit still remains undecided.[265] In the meantime the Franceschini, seeing that they had been deluded by this circumstance, since they could not get possession of the residue of the dowry, redoubled their cruelties to the poor Pompilia even to the point of threatening her with death. Hence she was very often obliged to save herself by fleeing into some other house, or before the authorities,[135] or even into the presence of the Bishop,[139] *whom she finally begged to save her by putting her in some monastery.* But this prelate thought it better to send her back[142] to her husband's home, urging him not to mistreat her.

When the unfortunate woman saw that the admonitions of this Bishop had been useless, and that this way of softening the heart of her husband and his relatives had proved vain, and when they reproved her for sterility[116] and for coquetry,[123] and for other faults of their own imagining, she betook herself to an Augustinian, Romano,[144] that he might write to his Superiors or to her parents to find some provision for her. But although the Father promised to do as she desired, his letters never reached their destination. The wretched woman was therefore desperate, and determined to get to Rome in some manner or other. She told the whole matter to Canon Conti,[145] a relative of the Frances-

chini, to whom she made a most pathetic picture of her situation. He was moved thereby, and answered that he would aid her, as he did by offering to have her taken to Rome by Canon Caponsacchi, his friend, since he himself ought not and could not do it. When the circumstances had been told to Caponsacchi,[28] he was opposed to it for fear of incurring the anger of the Franceschini;[182] but when he had been urged both by Conti and the woman, he consented thereto. And on the last Monday of April[184] the wife arose from bed as soon as day dawned,[188] without her husband knowing about it. She took some things of her own,[200] some jewels, and money, left the house, and at the gate of the city found Caponsacchi, who was awaiting her with a carriage.[192] They mounted together and set out on the road toward Rome.

When Franceschini awoke and discovered the flight of his wife, as he already suspected that she had started for Rome, he began to pursue her, and on the following Tuesday [should be Wednesday] overtook her at Castelnuovo in the post-house,[210] where she was in company with Caponsacchi. The young woman was not at all terrified at the sight of her husband, but on the contrary she mustered her courage and reproved[228] him for all the cruelties practiced upon her, because of which she had been forced to this step. Then Franceschini was thunderstruck, and did not know how or what to respond. Hence he thought it best to have recourse to the authorities. The fugitives were arrested by the Governor of the place, and both of them were taken to Rome and placed in the New Prisons,[255 345] and were charged with adultery because they had run away together. He tried to prove the charge by certain love-letters[232] which had been found, and by the deposition of the driver.[206] But as the adultery was not proved, the Canon was condemned for three years to Civita Vecchia, and the wife was shut into the monastery of the Scalette[276] on the Lungara.[278]

When the husband therefore saw that this had not helped him in gaining the dowry, he decided to go back to his own country,[256] leaving the care of his case in the hands of his brother, the Abate, who was in the service of a Cardinal. But although the Abate tried by many a turn to succeed in his intent before the tribunals, he could not achieve it. Hence he also decided to leave Rome. And he was spurred all the more by its becoming known that his sister Pompilia was with child.[283] For this reason, the Governor of Rome had constrained him to consent that she should keep her own home as a prison,[284] under security of 300 scudi to present herself at every demand of the Tribunal. The Abate indeed was unwilling to give his consent[288] unless Pietro Comparini should first assume obligation, by an official document, to furnish her with food.[287] *And then, when he had obtained the permission of his Cardinal, he sold his furniture and books*, and when he had made them pay over the 47 scudi which had been found upon Pompilia at Castelnuovo he left Rome.[304] After that Pompilia bore a son,[299] *whom she named Gaetano*,[20] *after the saint to whom she made her vows.*

Franceschini, who was now overwhelmed with manifold troubles, and was urged on now by honor and again by self-interest to take vengeance, at last yielded to his base thoughts and planned to kill his sixteen-year-old wife and her parents. When four other criminals had been admitted to the scheme, he left Arezzo *and on Christmas eve reached Rome.*[317] *He stopped at Ponte Milvio,*[318] *where there was a villa of his brother. There he remained in hiding with his followers until a time opportune for the execution of his designs should come.*

They spied out all the ways of the Comparini family, and on January 2,[319] *which was Thursday*,[301] at about seven o'clock[320] in the evening, he approached the Comparini home with his companions. He left on guard at the street door

Biagio Agostinelli[315] and Domenico Gambassini, and knocked at the door. When he had said that he brought a letter of Canon Caponsacchi[321] from Civita Vecchia the door was opened to him. Immediately this cutthroat Franceschini, assisted by the other two criminals, leaped upon Violante who had opened it[323] and struck her dead to the ground. Pompilia in this crisis[325] extinguished the light, hoping thus to escape the assassins, *and ran to the neighboring door of a locksmith crying out for help. But when she saw that Franceschini was provided with a lantern she went to hide under the bed;* but she was dragged from there, and was barbarously slain *with 22 wounds*[326] by the hand of her husband. Not content with that, he dragged her to the feet of Comparini,[328] who was likewise wounded by one of the other assassins, *and was crying out "confession."*[324]

When the uproar of this horrible slaughter was heard abroad,[331] *people ran thither, but the criminals succeeded in escaping. But in their haste one of them left his cloak, and Franceschini his cap,*[336] *which betrayed him afterward.* The unfortunate Francesca Pompilia, under the burden of such wounds as those with which she had been cut to pieces, *implored the Holy Virgin*[349] *for the favor of confession, and obtained her prayer.* Hence she survived some little while and *was able to tell about this horrible crime. She told that after the deed was done her husband had asked of one of the cutthroats who had done the murder with him, if she were indeed dead. When that one had assured him, he replied: "Let us lose no time,*[330] *but return to the vineyard."* And so they made their escape. *In the meantime the police had been summoned, and came with a captain. A confessor was quickly called and also a surgeon who gave his attention to the luckless girl.*

When the Governor had been informed of the outcome, he *immediately despatched Captain Patrizi* to arrest the criminals. *When the posse*[225] *arrived at the vineyard,*[333] *he found that these were no longer there, but that about an hour ago they had left in the direction of the highway. Then Patrizi followed without interrupting his journey, and when he had reached the inn he learned from the host that Franceschini had demanded horses with threat of violence,*[335] *but they had been denied him, because he lacked the necessary order.*[337] Hence he had traveled afoot with his companions toward Baccano.[340] *Patrizi continued his march, and after taking the necessary precautions* arrived at the tavern of Merluzza.[340] There he found the assassins, who were straightway arrested. On them were found, still stained with blood,[342] those daggers with which they had done the murders, and *upon Franceschini were found 150 scudi in money. This arrest indeed cost the life of Patrizi,*[346] *because having been overheated and wounded with a slight scratch he died in a few days.*

Franceschini's dagger was of a Genoese pattern,[414] *triangular, and with certain hooks made in such a way that in wounding they could not be drawn from the wound without such laceration as to render the wound incurable.*

When the criminals were known to be at Ponte Milvio, in that very inn they were heard on their preliminary examination by notaries and judges sent there expressly, and satisfactory confession was had.

When the capture of the delinquents was known in Rome, a countless throng of people rushed thither to see them, while all the criminals were tied to their horses and conducted to Rome. It is told that Franceschini, while making the journey, asked one of the officers how in the world the crime had ever been discovered.[344] *And when he was answered that his wife, whom they had found still living, had revealed it, he was so astounded that he was, as it were, deprived of his senses. About five o'clock in the evening*[347] *they reached the prisons.*[345] *A certain Francesco Pasquini, of the town of Castello, and Alessandro Baldeschi of the same town, both*

of them 22 years old,[424] *along with Guido Franceschini had been the slayers of the Comparini. And Gambassini and Agostinelli were those who had stood guard at the street door.*

In the meantime there were exposed in San Lorenzo in Lucina[57] *the bodies of the assassinated Comparini, who were so disfigured, and especially the wife of Franceschini, by wounds in the face*[332] *that they were no longer recognizable.* The unfortunate Francesca, when she had taken sacrament and had pardoned her murderers, and had made her own will, died, not yet having completed her seventeenth year. This was on the 6th,[350] which was the day of the Epiphany. She was able to justify herself against all the calumnies inflicted by her husband. *The surprise of the people at seeing the said bodies was great, because of the atrocity of the deed, which truly made them shudder,* seeing that two old septuagenarians[64] and a young girl of 17 years had so wretchedly perished.

As the trial of the criminals advanced, there were many arguments made on the matter, laying stress on all the more aggravating circumstances which accompanied this horrible massacre. Others also were made in the defense with much erudition, especially by the Advocate of the Poor, who was a certain Monsignor Spreti. He succeeded in delaying the sentence, because Baldeschi[390] made denial, even though "the cord" was administered to him twice, under which he swooned. Finally he confessed, and the others did likewise. *They also revealed that they had planned to kill Franceschini himself,*[338] *and to rob him of his money, because he had not kept his word to pay them as soon as they left Rome.*

On February 22 was seen *in the Piazzo del Popolo*[442] *a great platform with mannaia, and two great gallows,*[441] *which had been built for the execution of the criminals. Many stands were constructed for the accommodation of those curious to see such a terrible execution,*[443] *and so great was the concourse of people*[447] *that some windows brought as much as six dollars each. At the eighth hour* [*2 a. m.*][434] *Franceschini and his companions were informed of their death and were placed in the Consorteria. There they were assisted by Abate Panciatichi and Cardinal Acciajoli,*[433] *nor did they delay in preparing themselves to die well.*[437] *At the 20th hour*[435] [*2 p. m.*] *the Company of Death and of Pity arrived at the Prisons. The condemned were made to go downstairs*[438] *and were placed upon separate carts to be drawn to the place of execution.*

The first to mount the cart was Agostinelli, the second Gambassini, the third Pasquini, the fourth Baldeschi, and the fifth Franceschini, who showed more intrepidity and composure[439] *than the others, to the wonder of all.*

They left the Prison[440] *and followed the Pilgrims Street, the Street of the Governo, of Pasquini, Piazza Navona, the Pantheon, Piazza Colonna, and the Corso.*

The first who was executed was Agostinelli, the second Gambassini, the third Pasquini, the fourth Baldeschi, and the last Franceschini.[444] *When the last named had mounted the platform, he asked pardon for his sins, and begged them to pray for his soul, adding that they should say a Pater, an Ave, and Salve Regina for him.*[445] *When he had made the confessor announce that he was reconciled, he adjusted his neck upon mannaia and, with the name of Jesus on his lips, he was beheaded. The head was then shown to the people by the executioner.*

Franceschini was low of stature,[45] *thin and pallid, with prominent nose, black hair and a heavy beard, and was* fifty years of age.[44] *He wore the same garb as when he committed the crime—that is a coat of brown cloth, black shirt, a vest of goatshair, a white hat and cotton cap; clothed presumably as he had been when he had set out from Arezzo.*[446]

The execution took place during the *Pontificate of Innocent XII*, in 1698.

Trial and Death of Franceschini and his Companions,

for the

Murder of Comparini, his Wife, and Daughter,

Which happened during the time of Innocent XII.

NOTE.

The following additional account of the Franceschini murder case was discovered a few years ago in the Royal Casanatense Library, Rome (Misc. Ms. 2,037), in a volume entitled *Varii successi curiosi e degni di esser considerate*, containing thirteen pamphlets by various authors, most of them concerning famous criminal trials, the majority of them from Rome of the 17th century. The volume is in a hand of the early 18th century, and contains an indorsement to the effect that a copy was made from it in 1746. The Franceschini murder is the subject of the tenth narrative of the volume. Internal evidences indicate that it was written somewhat later than the secondary source pamphlet, by one who has considerable knowledge of the crime. It presents a better story and a fuller account of the motives of the actors, especially those of Abate Paolo and Violante, together with a number of additional matters of fact not contained in the Book. It never fell in Browning's way and hence has no immediate source-relation to the poem, but it does prove in some cases the accuracy of Browning's conjectures of unknown facts when definite data failed him.

The pamphlet was printed in translation by W. Hall Griffin in the Monthly Review, November, 1900. The present version has been made by the editor from a transcript of the original Italian executed by a friend in Rome.—C. W. H.

TRIAL AND DEATH OF FRANCESCHINI AND HIS COMPANIONS,

FOR THE

MURDER OF COMPARINI, HIS WIFE, AND DAUGHTER,

WHICH HAPPENED DURING THE TIME OF INNOCENT XII.

The Abate Franceschini,[50] born in Arezzo, Tuscany, of a family which was noble but poor of estate, having the cleverness to advance his own fortunes, proceeded to the city of Rome and was admitted by Cardinal Lauria into his household as Secretary of the Embassy. His inherent mental aptness won for him the favor of the Cardinal, who was held in great esteem in the Sacred College by reason of his learning, and who stood so high that he might well have aspired to the Papal Chair. In this lucky juncture, Abate Paolo, wishing to take advantage of his good fortune, thought to provide a wife for his brother Guido and to recoup his family fortunes by a rich dowry. Guido had served Cardinal Nerli[39] in the same capacity, as Secretary of the Embassy; but either because he had not the good luck or the ability of his brother he left that service. Although Paolo knew that the idle state of his brother would be hurtful to his claims of dowry, he did not cease aspiring to a very advantageous one, flattering himself that his own distinction might make up for the shortcomings of his brother.

Now Guido had reached full maturity, was of weak temperament, ordinary in appearance,[45] of a disposition more gloomy than pleasant, and moreover was of scant means. Hence, unless Abate Paolo should use his own influence, he could have little expectation for Guido. After having attempted several alliances of high rank, Paolo fixed his thought on Francesca Pompilia, the daughter of Pietro and Violante Comparini. As she was their only child, and as her parents were too far advanced in years to have other offspring, she would fall heir to a reversionary interest of 12,000 scudi;[67] and he hoped that he could easily make the match, as the Comparini were rather inferior to him in birth.

A certain hairdresser[78] frequented the home of the Comparini with the familiarity admitted by those women who desire to make themselves appear more beautiful to their husbands' eyes than they are and which some husbands tolerate who rely too much upon the fidelity of their wives. Paolo considered this woman to be the best means for aiding his designs for the marriage of Guido, and the latter often went to her shop with the purpose of winning her confidence by odd jobs. When he had often turned the talk to the subject of

taking a wife, she told him one day he might readily apply for the daughter of the Comparini, for she had a suitable dowry, besides being heiress to a reversionary interest, and was of a small family connection, which were his very requirements. When through her efforts he had succeeded in achieving the marriage, it was understood he should reward her with 200 scudi. The hairdresser lost no time in broaching the matter to Violante,[79] who, anxious for the advancement of her daughter and for the establishment of her own interests, agreed to speak of it to her husband and, if the matter were as stated, to persuade him to effect it. Violante spoke to her husband[81] about it and he did not reject the proposal provided that the vaunted riches of the Franceschini were verified, but he said this would have to be given in a written statement attested by well-known and reliable persons. When the hairdresser had carried back this word to the Franceschini, they sent a statement[82] of their real estate in Arezzo, with an income amounting to 1,700 scudi, attested by persons well known to the Comparini and who confirmed it to them orally.

Abate Paolo, fearing lest this fortune might escape him, gave them no time to change their minds, and in order to make the matter surer he desired to secure it by the hand of Cardinal Lauria,[88] his patron, by whom he had the marriage agreement drawn up; for his Eminence was pleased to show kindness to the advantage of a man whom he regarded with some favor. Meanwhile Comparini had become better informed of the rank and property of the Franceschini and found them far different[83] from the preceding account, both in rank and in property. Therefore he had a warm dispute with his wife, who persisted in the marriage and declared that he had been advised by persons envious of the good fortune of one or the other house, and who wished to hinder it, and that she was not shaken in her original desire; for she was very sure, from other truthful witnesses, that the Franceschini were of the first rank of nobility of Arezzo, and not of the second,[38] as those had said, and that the property given in the list had been untampered with. But the more she warmed to the matter, the cooler became Pietro; for being very diplomatic, if he could not gain, at least he wished not to lose by the marriage of his daughter. But what does not a man lose when he allows his wife to rule him? He loved her so tenderly that from the first day of their marriage he had constituted her the arbitress of his wishes. Violante, nevertheless, fearing lest Pietro, in a case of such importance, might be more influenced by reason than by flattery, could suffer no delay in making secure the reversionary interest which another house could claim if the Comparini were without an heir;[68] she therefore resolved to have the marriage performed without the knowledge of Pietro. When she had secured the consent of the daughter, who was always obedient to her commands, and had made an appointment with Guido, she conducted her, suitably clothed, one morning to San Lorenzo in Lucina, and espoused the two.[85]

Pietro felt the blow keenly, but being unable to find any remedy for it, he cloaked his anger[87] with the show of being displeased at not having been present, and this displeasure would cease in him with the joy of the nuptial feast, which should be in their house. He assigned to his daughter as dowry twenty-six bonds,[91] with future succession to the remainder.[92] On the very same day, after talking of the advantages which would result to both houses from the union of their interests, they decided upon the removal of the Comparini to Arezzo,[94] which followed in a few days, and with it the absolute administration of the property by Guido.[90]

When they had reached Arezzo the Comparini were received by the mother and relatives of Franceschini with all that show of love which is customary

on such occasions. But very soon, from constant association, disturbances arose,[95] and thence they passed to hostilities. The mother of Guido, a proud, avaricious woman,[46] who governed the household despotically, took to stinting it even in the necessary food. This moved the Comparini to complaints, to which the Franceschini first responded with insults and then with threats. This was a thing Violante could not tolerate, for, being a woman, she had her own share of natural arrogance.[64] So she began tormenting Pietro, cursing the day when he had decided to move to Arezzo, laying the blame on him for all that of which she had been the cause. And Pietro, who was one of those men who let themselves be overcome by a couple of crocodile tears of their wives, instead of reproving her for the undertaking (although she had concluded the marriage against his wish and without his knowledge), entreated her affectionately to bear with patience the abuses, which would possibly cease when the Franceschini saw them defended by their daughter.

At that time [November 30, 1693] passed from this life to Heaven Cardinal Lauria, a churchman of merit beyond all praise. Then Abate Paolo[50] was elected Secretary in Rome of the Religious Order of Malta. At this the haughtiness of the Franceschini increased so much that they considered it grand good fortune for the Comparini to be considered their friends, not to say their relatives. Violante being no longer able to live under the proud command of another woman, since she had been in the habit of domineering,[64] as her husband had been subject to her wishes, so tormented him that she induced him to take up his residence in Rome again. For this purpose the Franceschini gave them a sum of money[99] sufficient for the journey and for the most necessary furniture in the home.

Scarcely had they reached Rome when, to the surprise of everybody, it was reported that Pietro had dispatched a judicial warning, in which he set forth that Francesca Pompilia was not really his own daughter[103] and that therefore he was not obliged to pay the dowry.[260] He brought the attestation of Violante his wife, who had declared that to check her husband's creditors[107] in the matter of the trust fund and to enjoy the income of the bonds, she had feigned to be pregnant[105] and, that her husband might not discover the trick, she agreed with him that when she became pregnant they should abstain from association until after the birth of their child. And so, on the very day of this pretense, they took separate bedrooms; still further, by well-arranged clothes, she feigned the swelling of the womb, and by suitable drugs made pretense of nausea until her time was come. She then took advantage of a day when Pietro was occupied in his lawsuits, to bring forth the pretended birth, which was well carried out by the sagacity of a midwife in the secret, who provided whatever was necessary. And that the house servant might not detect the trick, they sent him to the apothecary to secure certain medicines. At the same time the midwife went to get a little creature whom she had received the day before from a neighbor, who was already in the secret. When she had returned to the house she summoned a familiar friend of the Comparini from a window. Matters were so well arranged that when the woman arrived, there was nothing more to do than to make her believe what was not really so. And to trick more surely the thought of this neighbor, they feigned that when Violante wished to pass from the bed to a chair, she fainted into the arms of the woman by reason of her pains, since the midwife could not run up in time.

This unexpected act of Pietro, which became known in Rome immediately, was heard with less wonder than scorn. The just anger of the Franceschini would have undertaken due vengeance if it had not been mitigated by the hope

that, since Pompilia was not the true and legitimate daughter of Pietro and Violante, the marriage would be annulled[297] and Guido's wounded reputation would be healed. But when he had taken counsel with several authorities and found they were of different opinions, he was unwilling to risk so doubtful an affair, in the promotion of which they would necessarily confess and presuppose that she was not the daughter of the Comparini, and by this confession they would be prejudiced in their claims to the dowry. They opposed the judicial notice and obtained for Pompilia the continuance of her quasi-relation as daughter[263] together with a decree for the transfer of the dowry bonds. But Pietro appealed[264] to the Signature of Justice so trickily that the Franceschini had the expense of the transfer, but not the enjoyment of the income, since they obtained from it not even a two months payment.

The unfortunate Pompilia was the victim of the hatred of these two houses; for she was left alone in Arezzo at the will of her husband, her mother-in-law, and her relatives, who were mortally offended at her parents, and she was hourly threatened with death. In so deplorable a state the courage even of a more mature woman would have failed, not to speak of that of a girl only sixteen years old. For she was innocent of the wiles of her mother and of the duplicity of her father and by her own good qualities she was worthy of tenderness rather than cruelty. The unhappy one suffered as best she could these tyrannies which were ever increasing, but despairing of all hope of peace, she often had recourse to the Governor of the City,[135] that he might interpose his authority with the Franceschini. As this was of no avail, she threw herself at the feet of the Bishop,[139] who had Guido come into his presence and who tried to reconcile him. But Guido's anger increased all the more because of this public recourse, and he threatened Pompilia with certain death if she should ever try it again.

When the poor child saw every way to peace closed against her she appealed to Canon Conti,[35 145] a relative of the Franceschini, who was very well informed of her wretchedness because he visited the house, and she begged him to save her life, which was in continual peril. He was moved to pity, for he knew that she had no other remedy than flight. As he could not personally assist in this, lest he would have to bear the hatred of the entire family connection, he suggested to her that the very person for such an enterprise was the Canon Caponsacchi,[28] his intimate friend and somewhat related to him by blood, whose courage was no less ready to meet danger than to overcome it.

Pompilia accepted the counsel of Conti, who lost no time in opening the affair with Caponsacchi. He at first showed some unwillingness,[179] as he hesitated to carry away a wife from her husband, even with the sole purpose of conducting her to her own parents. But when he had been fully informed of the insufferable abuses of Guido and his relatives his pity prevailed over all other considerations and he accepted the undertaking. Pompilia, who was eager for this, tried to win him by letters and amorous verses,[232 247] yet always keeping herself true to her marriage vows, as one may read in her letters. In some of these she praises the modesty of Caponsacchi, in others she reproves him for having sent some octaves which were slightly reprehensible, and she urged him to keep unstained that nobility of which he boasted. On the day appointed for flight, with the assistance of Canon Conti, the two took their places in a carriage and traveled as fast as they could,[194] without resting save when it was necessary to change horses. They arrived the second morning at dawn[211] at Castelnuovo,[210] and, in spite of the fact that the host had assigned them a bed for repose,[215] Pompilia seated herself in a chair and Caponsacchi went down to the stable to urge on the driver.

When Guido awoke after the flight of Pompilia and perceived that she was not in bed, he arose in a fury and, seeing the jewel-box open[198] and minus the jewels and money,[200] which it had contained, he surmised what had happened to him. Accordingly on a good horse he sped along the Roman road and overtook the fugitives at the abovesaid inn of Castelnuovo an hour after their arrival. When Pompilia saw him, with that courage which desperation may arouse even in the weakest spirits, she seized Caponsacchi's sword which lay upon the table, unsheathed it, and thrust at his life,[227] calling him betrayer and tyrant. Guido, fearing lest her spirit no less than the valor of Caponsacchi might bring his death rather than revenge, turned his horse and rushed to the authorities.[222] He had the fugitives arrested and conveyed to the New Prisons,[255] where he entered charge of flight and adultery against them.

The Abate Paolo who, as has been said, was the Secretary of the Religious Order of Malta in Rome, made noisy recourse for his honor to the Pope,[280] and he put a petition before Monsignor Pallavicino, the Governor, demanding that he declare Caponsacchi the seducer of his sister-in-law, and both of them guilty of adultery, and that his brother for that reason was entitled to gain the entire dowry. Legal proceedings[269] were instituted against them according to the most rigorous forms of law, but no proof of guilt was found against Caponsacchi[272] and Pompilia except the love letters[282] written at the time of the arranging of the flight, the undertaking of the flight itself, and the deposition of the driver.[206] For the latter declared that he had sometimes seen, when he had turned back during the journey, that they were joined face to face, that is cheek to cheek, a matter which did not make full proof of fault, since the rough roads and the headlong speed of the journey jostling them about[209] might have been the cause of it. Wherefore the Court deemed it prudent and just to sentence Caponsacchi to three years relegation in Civita Vecchia for his rashness[272] in running away with a wife from her husband, even though the motive was pity. While the case of the Franceschini against Pompilia was on trial, Pompilia was transported with their consent, as their prisoner, into the Monastery of the Scalette[276] on the Lungara,[278] with the obligation that Guido, her husband, should provide her food.[282] There, after a little while, it was discovered that she was pregnant and as it no longer comported with the reverence of that place that she should remain there,[283] with the consent[288] of Abate Paolo, who had power of attorney for his brother, Monsignor the Governor ordered that she should pass into the home[284] of the Comparini, her parents, under security of 300 scudi to keep it as a secure prison; and he declared that Guido's obligation for her food should cease[287] the very day she left the monastery.

This cause, in which the Franceschini were not obliged to have hand for mere honor's sake, was seen to have its chief motive in selfishness. Therefore there was not a company where the conduct of one or the other party was not censured. For this reason the Religious Order of Malta gave secret intimation to Abate Paolo that he should resign his office. At the loss of this honorable post, rein was given to the evil tongues of his adversaries. This put Abate Paolo in such straits that, ashamed to meet his dearest friends, he decided to leave Rome[304] and to pass to a clime where information of the dishonor that so afflicted him would never come.

When Guido was informed of the departure of his brother and of the obligation resting on him of repairing the honor of his house, he thought[306] that to go into voluntary exile, as his brother had done, would only prove the baseness of his own mind. For he had been justly charged with this since at the time he had overtaken his wife with her abductor he had failed in that very place to take the vengeance[222] which was demanded at his hands.

In due time Pompilia had given birth to a son[299] who was sent out of the house by the Comparini to nurse.[309] Thereupon everyone believed, and especially Violante, that the ties of blood would move Guido to a reconciliation with his wife. For in spite of their declaration that Pompilia was not their daughter, the minds of the Comparini might still be disposed to some reconciliation. But Guido's thought was quite different, for he was continually stirred, even in the absence of Abate Paolo, to plot the removal from this world of the entire memory of his dishonor by the death of Pompilia, Pietro, and Violante, and possibly of still others.

Guido had in his employ, in the country,[310] a daring and wicked laborer[311] [Alessandro Baldeschi] to whom he often exaggerated the shame which his wife and the Comparini had brought upon his house. To him Guido revealed that with his assistance he wished to purge with their blood the stain to his honor. The cutthroat straightway accepted and declared that, if there were need of other company, he had three or four friends for whom he would vouch. Guido replied that he should take three bold and trusty ones to make sure against any possible resistance and should use all care to secure them at the lowest possible price.

When all had been agreed upon,[316] and arms suitable for the affair had been prepared,[313] Guido, with his four companions in disguise, secretly took the road to Rome. Reaching the home of the Comparini at eight o'clock[320] in the evening, one of them knocked at the door, and when Pietro responded the murderer told him that he had a letter to give him which had been sent from Civita Vecchia by Caponsacchi. When the women heard this they told Pietro to have him come back again next morning, urging him not to open the door. But he was curious about the news from Caponsacchi and when the murderer replied that he could not come back in the morning, as he was obliged to leave that night, he opened the fatal door and thereby admitted his own death and that of Violante and Pompilia.

Guido in a transport of rage leaped in with two companions, leaving the others on guard. They first dealt the poor old man many blows and deprived him of life before he could lift his voice.[324] Scarcely had the unfortunate women seen this when, transfixed with like wounds, they suffered the same fate. Upon the unfortunate Pompilia fell the blows of her husband,[326] accompanied with countless insults, and after he had trampled her several times under foot and wounded her anew, not trusting his own fury, he told his companions to see if she were really dead. One of them lifted her by the hair[327] and let her fall again, and assured Guido that she was no longer alive.

When this barbarous murder had been concluded and the money agreed upon had been paid to the cutthroats, Guido wished to leave them, but they would not allow him to desert them for fear that one might kill another, as frequently happens for hiding such misdeeds. Or else the murderers, while united with their leader, had agreed to kill Guido[338] as they thought he might have a large sum of money. Hence they did not consent to his leaving them and they took the road toward Arezzo together, which they agreed to make on foot,[339] as they could not secure posthorses.

From these repeated wounds Pietro and Violante were quite dead, but not Pompilia, though her wounds were more numerous. For because of her innocence she was especially helped by the divine mercy[348] and she knew so well how to feign death[329] that she deceived the murderers. When she saw that they were gone, with her dying breath she mustered sufficient strength of voice to make the neighbors hear her cries for help.[331]

They found her in the last extremities and eagerly ministered first to her soul and then to her body. Her wounds were so numerous and of such a nature

that although they did not immediately kill her, they made her death certain. This occurred a few days later, to the sorrow of all those who assisted her and who had knowledge of this pitiable case. The fortitude with which she suffered the pains of her treatment caused as much wonder as her resignation to the Divine Will caused love. She not only did not blame the cruelty of her husband, but with fervent prayer she besought God to pardon him.[359] The compassion of her assistants both for her soul and for her body, I attest by the following sworn statement concerning not only her innocence, but the happy passage of her pure soul to heaven.

[Then follow the affidavits of Fra Celestino and others given on pages lvii-lx.]

Divine justice, which would not suffer so atrocious a deed to go unpunished, caused the criminals to be overtaken by the authorities at the break of dawn[340] at an inn a few miles from Rome. For when they had eaten a little, they went to sleep by the fire,[341] fatigued by the journey and overcome with drowsiness. The police rushed violently in upon them and, pointing carbines at their breasts, assailed and bound them at once. They were straightway taken to the New Prisons[345] and the Governor apprised the Pope[62] of this barbarous murder and of the arrest of the guilty. He gave commands that, without delay and with all rigor, trial should be brought, this being a case which, by reason of the consequences which might arise from it, should be examined into with very special attention.

Far less torment[526] than would seem to be necessary had to be applied to get the confession of the murderers and of Guido, who more than the rest had stood by his denial. But at the sight of torment he had not the heart to resist longer and confessed fully, saying indeed that the crime had had no other motive than the reparation of his honor which had been so publicly offended. This was a matter which any common man would have undertaken, not to speak of himself, who was a gentleman; and if on his first examination he denied the truth of this, he had done so lest he might injure his companions, who had aided him in a deed worthy of all sympathy, because he had honor as his sole end.

With the confession of Guido and its ratification by the rest, the process was finished, and they were sentenced,[427] the cutthroats to the gallows and Guido to mannaia, a means of death conceded rather out of respect for his being in clerical orders than for any other reason. The Advocate and Procurator of the Poor had written so ably in their defense on the point of honor that there is no memory of more learned arguments. But the features of the crime were so many (and all of them punishable with death) that they were overcome no less by their nature than by their number. Among such features was the bearing of arms[413] prohibited under capital penalty, the death of Pietro and Violante[401] who were not accomplices in the flight of Pompilia, the murder while a law-suit was pending,[421] and in their own home,[417] which place the authorities had with the consent of Guido assigned to Pompilia as a secure prison.[419] The many other weighty charges which displayed the great learning of the defenders were the just cause of the death of the accused. Yet with the usual hope of all those who make confession of capital crime, Guido flattered himself that he could save his life by reason of his honor. At the unexpected announcement he did not give up to such a frenzy as frequently follows in those who experience so terrible a disaster, but, as if stupefied, after a few minutes he heaved a deep sigh, accompanied by a few tears, which by their extraordinary size showed dying symptoms. He said: "I well feared a heavy sentence, but not that of death. My crime is great, but love of honor has never suffered me to perceive what it was until now that sentence has

been passed, which I hold in such reverence that I wish to appeal only to God, to whom alone I turn for the only mercy. Without His will I should never have reached this awful pass, which may be a comfort to me and not a source of bitterness, that I may gain by entire resignation to His will the merit of His pardon." And then he[433] threw himself into the arms of the compassionate Frati and showed such signs of true contrition that their prayers were accompanied by tears rather than by exhortations.

His four accomplices did not submit themselves with the same readiness,[437] for as they were of lower birth so were they less swayed by reason, which would render them impressible to the punishment they had merited. The oldest [Baldeschi] and youngest [Agostinelli] were the most obstinate, the one from having a heart hardened by so many years of evil life, and the other being all too sensitive to so harsh a punishment for a single crime, in the very flower of his youth, without ever having spilled a drop of blood, and with the sole fault of having been induced to stand as guard at a door through which Guido had had to pass, to purge himself of the stains to his honor by the blood of his foes. As the hour of execution drew nearer, the stubbornness of these wretches so increased that the Frati despaired of their repentance. At last the Divine Mercy, which works miracles when we least expect it, entered their hearts and gloriously demonstrated His omnipotence. They finally trusted in God, and the memory of those faults which had made them obstinate, and which were now illuminated by the Divine Grace that disposed them to penitence, fitted them for pardon. When these souls had been secured for God after such a hard contest, the execution passed from the New Prisons at Tor di Nonna to the scaffold raised in the Piazza del Popolo in view of the gate and of the Corso. In the midst was the block on a lofty scaffold,[441] larger than usual and with steps made with particular care; on the two sides the gallows were placed at equal distances. In spite of the vastness of the Piazza, not a single foot was left which had not been occupied by stands,[443] which were covered with tapestry and other ornaments forming a theater for festal celebrations rather than for a solemn tragedy.

His four companions preceded Guido, each of them in a separate cart,[438] assisted by the devotion of the accustomed Frati [The Brotherhood of Death] and followed by a countless concourse of people praying for a blessed departure, which in view of their contrite resignation seemed not at all doubtful and even a certain hope. Rarely did Guido Franceschini turn his eyes from the crucifix,[439] except when nature, overwearied by the steadfastness of his gaze, made him turn away his head but not his heart, which had been wholly given to his Creator so that none was left for himself.

When he had reached the Piazza di Pasquino, and the cart had stopped before the church of Agonizzanti, where on days of public execution it is customary to offer the Sacrament to the delinquents condemned to death and therewith to bless them, Guido knelt and began to recite, in a voice quite audible to bystanders, certain verses of the *Miserere*,[445] and among them this, "Hide thy face from my sins and blot out all mine iniquities." He accompanied this with such signs of sorrow and penitence that the people by their tears showed no less grief than the one condemned.

With equal devotion his companions received the same blessing, but the behavior of the youngest [Agostinelli] was remarkable beyond belief, who beside himself with his love of Heaven and of God, by his expressions which exceeded his own capacity, confounded the wisdom of his pious assistants.

Thence by the most densely populated streets[440] they continued the journey to the Piazza del Popolo, where they all died, Guido last, with those acts of

contrition which their preparation had shown. As the youngest had displayed most blessed signs during life, so it pleased God that he met his death likewise, for at the moment the executioner did his work, he clasped between his breast and his hands the image of that crucifix whereby they had become certain of Divine Pardon. This assured the people of his salvation as his untimely death had aroused their pity.

Rome has never seen an execution with a greater concourse of people, nor does it remember a case on which there was such general talk as on this. Some defended the Comparini, because they had suffered abuse, others the Franceschini as it was a matter of honor. But, on looking at the matter dispassionately, they were adjudged to be equally guilty, except that Pompilia, who was entirely ignorant of the truth, was without blame; for she had consented to the marriage at the command of her mother without the knowledge of her father, and had fled from her husband for fear of death with which he had often unjustly threatened her.

From trickery arose the union of these two houses, from the Franceschini in frauds regarding property they did not possess, from the Comparini by the pretended birth, or by this very pretense if the birth were real. The trick arose from greed of gain in Pietro to secure the trust moneys for himself, and in the Franceschini to minister to their own ease; so all was done contrary to laws both human and divine. Hence a bad beginning was followed with a wretched ending, as has been told above.

The Making of a Great Poem.

An Essay

On the Relationships of The Ring and the Book
to the Old Yellow Book.

Lovers of dead truth, did ye fare the worse?
Lovers of live truth, found ye false my tale?

THE MAKING OF A GREAT POEM.

"So absolutely good is truth."

I. The Mystery of Poetic Creation:

The philosophy of art concerns itself with some of the most profound truths of humanity, and the creative act and creative artist alike have always fixed the attention of the thoughtful. In olden days, the divine afflatus endowed the *vates* with a sacredness which all men revered. Bards wandered safely amidst even the more barbarous conditions of medieval life. Artists have continually invoked divine assistance, whether of the Muses or of the heavenly Urania. The scientific spirit of our latter day may not regard with religious devotion this divine mystery of creative art, but it is still probing with no less interest the meaning and power of the creative activity of the human spirit. This diverted regard has shown itself largely in the increased study of biography and of source-materials, which have been sought and sought again for an explanation of the mystic power we call genius. The biographical study of artists, which has increased so greatly in recent years, has been no mere idle curiosity concerning personal gossip; and the reader has turned in disappointment from many a biography, from which the personality of the artist—the one all-important x of the problem—has utterly escaped. The biographer's attempt to trace power to the facts of heredity, education, and environment seems to fall far short of this purpose. And so the mystery of creative genius gets but a half answer in biography.

Latter-day critics have also turned in their research to possible revelations from source-studies. How far does the artist's raw material control or master his creative activity? What is the difference between the material and the final product? What personal activity of the artist effected this change? We soon find that art is far more than matter of fact. It is personalized, subtleized fact—fact raised to a higher coefficient by the intense play of genius upon it; it is fact athrob with the deeper truth of life, which is part of the endowment of the great artist. Some alchemizing power, which is a function of the artist's personality, has wrought the change. And this power is little less mysterious now than when in olden days it was called inspiration. The play and the illumination of this power differ indeed with the individual artist, and the general problem of its place in art assumes new aspects with each

genius studied. Nineteenth century criticism has already examined, so far as lay in its power, the artist's work upon his originals. Beginning with Shakespeare's source-books, it has followed on to those of Chaucer, Goethe, Milton, Tennyson, and others. Each of these studies has served to emphasize the import in art of the inalienable personal force of the man of genius. He has succeeded in no mere lucky find of what would have made another man great. We are told that the story of Evangeline was given originally to both Longfellow and Hawthorne, and that for a while there was a question as to which should use it. But we can not doubt that what has fixed the world's attention on Evangeline would have been lacking if even Hawthorne had undertaken his version of the story. Now source-study can in no sense fathom or explain away the element of personal power in creation, but it can at least differentiate the peculiar master-power of each artist; it can make clearer the Miltonic, the Shakespearian, the Chaucerian touch. For in art, as in life, we find important data for estimating the man in considering the material upon which he reacts and in which he takes a peculiar interest. Many a secret of personality opens at the sesame of a master passion or of a dominating interest, and slowly from the contemplation of these various artists at work we may evolve a philosophy of creative art.

With a view toward a fuller solution of this master problem, and toward a clear comprehension of the peculiar genius of Robert Browning, the present source-study of his chief poem has been undertaken. For Browning is one of the most original and vital of our English poets, and the play of his personality in its creative moments can not fail to interest the student of art and the student of the human soul. In this comparison we may trace the creative reaction of Browning through a period of four years upon a mass of chaotic, unpromising material. Browning's habits as an artist come gradually into clearness as we follow this study to its ultimate outcome. We see his reverence for truth, his intense human sympathy, his grotesquerie, his realism, his insight into motive, and his easy mastery of countless details. While his intellect grasped every fact of this history, his insight and imagination had free sway; and he felt no check to his power in his abiding conscientiousness in the use of fact. Still further, this study does much to explain the creation of the unique genre which Browning has developed from his practice of monologue writing for *The Ring and the Book* as his crowning work.

II. The Ring and the Book as the Macrocosm of Browning:

In the wide range of the work of Robert Browning no single poem can rival *The Ring and the Book* in scope and manifold power. The subject had fallen to his hands at the very fullness of his maturity by

" predestination," as it seemed to him. In the poem, as he planned his treatment, there was opportunity for every phase of his peculiar genius, so that the completed masterpiece became the macrocosm of his work. Fortunate indeed is the artist who at the climax of his career meets the subject that will exact all and express all of himself. Browning's whole artistic life had been tending toward some such large expression of itself, and the poet did not hesitate to invest lavishly of his creative energy, confident of the final power of this work. In his early manhood he had written long poems—the biographies of his aspiring heroes; but they had been intense and narrow, eloquent but chaotic. Moreover, Browning the humorist and realist is utterly lacking in *Paracelsus, Sordello, Strafford,* and we may almost add the dramas. Then follows a quarter of a century devoted to shorter subjects, from many phases of life, but none of these singly can " all-express him." They display widely varied powers. His humor laughs through Lippi, his romanticism follows the flight of the Duchess, his satire pierces Johannes Agricola, his philosophy falls from the lips of Rabbi Ben Ezra, his analytic keenness in character pierces the episcopal robes of Blougram, his grotesquerie runs riot in Caliban, his hero-worship exalts Luria, and his personal devotion utters itself in *One Word More* and *By the Fireside.* These poems, gathered chiefly in *Men and Women,* 1855, and *Dramatis Personae,* 1864, had firmly established the Poet's reputation, so that he stood at least a sure second to the famous Laureate. None of them represent long-protracted thought and labor.

At this juncture the story of Pompilia and Caponsacchi and Guido fell in his way. He might have made of it a dramatic romance of a few hundred lines. He preferred to give it an importance in his art far beyond anything he had ever essayed. This had not been the cherished purpose of a lifetime, as were the *Paradise Lost,* the *Divina Commedia,* the *Faust,* or the *Idylls of the King.* But Browning almost instantly realized the fitness of the subject for his *magnum opus*—though it had none of the prestige of the century-laden legends which fascinated these other poets. Hence he treated it in no cursory way, but continued working on it till the poem had reached epic dimensions, till he had devoted to it four of his ripest years, and till it had deployed every energy of his nature. He has nowhere displayed more telling irony, in which he is so eminent, than in Bottini; more profound philosophy than in the Pope; more tender understanding of woman than in Pompilia; nor sadder nor wiser insight into the depths of sin than in Guido; nor a finer conception of true heroism than in Caponsacchi. The poem ranges through many emotional keys. It contains long passages little removed from prose, save in form, but it rises to heights of impassioned poetry seldom attained by Browning. It is therefore what the long poem should be—expressive of the whole nature, the whole art, the whole

view of life of the Poet. That he himself saw here his greatest subject * is evidenced, apart from this excessive expenditure of time and skill upon it, by the motto from Pindar which he inserted in the " old yellow book ":

> Her strongest-winged dart my Muse hath yet in store.[538]

He would, therefore, summon every power to his new theme and spend more of himself on it than on any other subject with which he had ever grappled. And yet, though written broadly and deeply, it was simplified in method and in style until it was fairly directed to the average intelligence of thoughtful readers. It can in no sense be regarded as a critics' bone of contention, but is one of the most lucid of all of the Poet's works. Hence it is no matter of surprise that the better critical appreciations of Browning which have appeared of late years, such as those of Brooke, Dowden, Chesterton, and Herford, have given the poem a place of greatest importance. It stands eminent, we do not hesitate to say preëminent, among the longer English poems of the nineteenth century.

III. The Poet and the Source-study of his Poem:

With a self-consciousness of his artistic functioning, not unusual in Browning, the Poet insistently calls attention to the source of his long poem. The very title includes the Book; and *The Ring and the Book* is symbolic of the artist's use of his raw material for the purpose of his art. In the introductory book of the Poem, the Poet describes the finding and the nature of the Book with such particularity that the reader naturally queries,

> is there book at all,
> And don't you deal in poetry, make-believe,
> And the white lies it sounds like?

The sham book of memoirs or the book of letters is such a commonplace in fiction that its mere mention excites the incredulous smile. De Foe was a past-master in this art of sham originals, and Hawthorne has made this device a door of entry into his *Scarlet Letter*.

But Browning had long given his readers the impression of a somewhat different art—of a thoughtful grappling with fact as he found it—of a straightforward truthfulness of art. " Truth-teller was our first great Alfred called, truth-lover he " might well have been said of Browning, as it was said of Tennyson. Yet no one has had at hand the material to prove his marked fidelity to the fact-basis of his imaginary superstructure in *The Ring and the Book*. The Book, indeed, is no fiction, but a veritable fact, shaping the Poet's whole story.

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* " I know he thought *The Ring and the Book* was going to be his greatest work long before he had finished it. * * * he often told me while writing that it would be the longest poem in the English language. He was more and more interested in the work as it advanced."—Letter from Mr. R. B. Browning.

Nor is he satisfied to consider its contents as crude raw material. To him they are " pure gold "—" in this book lay absolutely truth "—

> The untempered gold, the fact untampered with,
> The mere ring-metal ere the ring be made!

And he continues,

> From the book, yes; thence bit by bit I dug
> The lingot truth, that memorable day,
> Assayed and knew my piecemeal gain was gold.

His insistence on his figure of " the gold " shows how highly he valued the contents of this old volume. They were truth—truth that challenged him, truth that called forth all his mastership, truth that tested all his insight. And " truth " is a master word throughout the Poem, to which speaker after speaker returns with strong insistence. The philosophy of life's truth is one of the most important phases of the thought behind the story and the characters of this Poem.

Still further the Poet was intensely interested in the psychological process whereby this " gold " of truth was fashioned into the " ring " of art. No critic nor philosopher could show a closer interest in this play of poetic genius upon its material. He would pluck out the heart of this mystery—a mystery which fascinated him all the more because it had been his own familiar for half a lifetime. He who had taken apart the " wheels " of so many souls, now looked curiously into this subtlest power of his own mind. What was the process of this transmutation? Whence was its power? The material was not worthless in itself; but upon it the spiritual power of the artist had to work with life-giving mastery until he too became a creator and reached man's highest function.

> No less, man, bounded, yearning to be free,
> May so project his surplusage of soul
> In search of body, so add self to self
> By owning what lay ownerless before,—
> So find, so fill full, so appropriate forms—
> That, although nothing which had never life
> Shall get life from him, be, not having been,
> Yet, something dead may get to live again,
> Something with too much life or not enough,
> Which, either way imperfect, ended once:
> An end whereat man's impulse intervenes,
> Makes new beginning, starts the dead alive,
> Completes the incomplete and saves the thing.

A third of a century before, in *Sordello,* line 1212, Browning had said—

> they are fain invest
> The lifeless thing with life from their own soul.

And Swinburne's words from the Prologue of *Tristram of Lyonnesse* state this same truth:

> and give
> Out of my life to make their dead life live
> Some days of mine, and blow my living breath
> Between the deep lips of forgotten death.

This creative power seemed to Browning to be the artist's highest prerogative:

> But here is the finger of God, a flash of the will that can.

It masters death in these moribund or extinct relics of life, and Browning does not hesitate to liken it to the miraculous, life-giving power of Elisha. (RB., I, 760-71.) This power lay in the artist's " surplusage of soul," in the abundant life of the spirit, in the ability to " fuse his life with that inert stuff," till the story was athrob with a new life, subject to the shaping and molding hand which would reduce it to art form. Such creative vitality ever distinguishes the genuine artist from the mere technician:

> The life in me abolished the death of things,
> Deep calling unto deep: as then and there
> Acted itself over again once more
> The tragic piece.
>
> A spirit laughs and leaps through every limb,
> And lights my eye, and lifts me by the hair,
> Letting me have my will again with these.

This creative joy is akin to the creative joy of God as elaborated by the Poet in the last book of *Paracelsus* (lines 642-80), and man shares thereby the high prerogative of Deity, he himself rising to godlike power. Such is the dignity and the glory of creative art in the feeling of Robert Browning.

We may see, therefore, that the Poet himself invites, nay allures, his readers on beyond the Poem to the Book, in which he had found the story, and to a study of the poetic method in changing " book " into " ring." And few readers of the Poem have failed to respond to him and to raise silent question as to what truth the Poet had found in his documents. What is the gold of fact? How much is alloy? What was Browning's mastership over his material? Did he disregard the integrity of fact? Did he expand his masterful tragedy from a few scattered hints, or did he owe his source-material a large debt for even the form and expression of his poem? Such questions will find abundant satisfaction in the perusal of the Book itself, and the study of " ring " and " book " side by side throws a flood of light on the individual artistic mastery of Robert Browning.

IV. The Peculiar Features of the Present Source-study:

There are, moreover, certain peculiar phases of interest in the source-study of *The Ring and the Book* as compared with that of most other important poems.

Almost all the important extensive poems have had a long ancestry either in oral or written literature. Our primeval epics grew up through cycles of ballads. Many a literary ancestry is traceable back through centuries of varying forms, until the origin is lost in the mists of the prehistoric. Lowell has put this fact in his own way when he says " All the good stories came out of the ark." The Arthurian legend, which Tennyson used as basis of his own longest poem, is typical of such stories, and of the making of books on or from it there is no end. *The Earthly Paradise,* which was written and published in the same years as *The Ring and the Book,* is a patent retelling of world-old stories. But, unlike all of these, the pedigree of *The Ring and the Book* is democratically short. The story had arisen abruptly from real life—

> Secreted from man's life when hearts beat hard,
> And brains, high-blooded, ticked two centuries since.

It stirred the excitement of its own brief day, and would now demand the heaviest headlines of our sensational journals. The facts were thrown at once into the professional statements of the criminal courts, but then died away. The story never engaged an artist's attention, nor had it been tested by popular appreciation in the century and a half which elapsed before it fell into Browning's hands. The material therefore had had no artistic breeding.

Browning in fact has written few poems on conventional and long-practiced subjects; he seldom turned to the well-bred story, and when he did so, as in *The Glove* or *Alcestis,* it was for the purpose of presenting his own unique interpretation of it. He preferred to gather materials and subjects in out-of-the-way, unpromising nooks and corners. He was the sole important Victorian poet who did not draw upon the *Morte d'Arthur;* and the well-trodden paths of the rich mythology and history of the Greeks tempted him very little, especially when we consider that he was so intimately acquainted with all that was Greek. And those Greek themes he adopts, such as Pheidippides and Balaustion, have abandoned all adherence to classic tradition in form and spirit. To him, therefore, the fact that his story was a literary upstart would have had no deterring effect. It probably stimulated his interest.

Browning's source-material is also far more definitely limited and ascertainable than is usually the case with the sources of great works of art. The Arthurian legend is too complex and multiform for the critic to feel definitely sure of all his data in such study. Even in Shakespeare, where we have some well-ascertained source-book in novel, or

play, or poem, or history, we are seldom certain whether the poet has not had one or even several other versions of his story before him. He doubtless had his Plutarch in thought while writing *Julius Cæsar,* but we can not tell the countless sources from which he might have drawn certain of the facts and feelings of the story, for Julius Cæsar was a popular subject on the stage for many years before Shakespeare used it, and the theatrical tradition must have influenced the dramatist in many ways. But we have here in the Book not merely the definite source of the Poet's information, but we are sure it was practically the sole source of his information. The story was not told in variant versions elsewhere; it was not developed into countless ramifications by generations of writers. Even the variant versions of public history of a date equally remote would afford the artist far more opportunity for artistic choice. But here in the Book we can be sure that we have before us the entire basis of fact for the Poem as Browning has wrought it. His careful search for further fact was in vain. (Cf. RB., I, 423-41, XII, 779-84.) This gives an exactitude, a scientific accuracy to the present source-study seldom attainable elsewhere, and justifies the critic in an even more minute study of original and poem side by side, as significant of the methods of creative power.

With all its definiteness of limitation, however, this source-material offers within its limitation a confusing complexity—we might almost say a chaos. Motives and characters are subject to interpretation and counter interpretation. The very facts of the story are matters of dispute. At no point are the characters of Guido, Pompilia, and Caponsacchi seen to emerge in their fullness, and no consecutive story of the mere incidents is given. The truth of this tragedy is as utterly dismembered as were the limbs of Osiris, and the Isis artist must have ranged through the whole extent of the Book to gather the scattered fragments of truth. Such chaos demanded the most masterly of organizing and interpreting power in Browning, before order could come out of confusion, and the very spectacle of the Poet's constructive mastery, his executive orderliness in art, in building all these fragments back into a consistent whole through which again an organic unity may be felt, is almost unparalleled in source-study.

Browning might have made the problem lying in this confusion easier for himself, if he had assumed an arbitrary power over this new province which had fallen to his imagination. But he also felt that he was peculiarly circumstanced in his creative activity by the " truth " of the materials with which he was working. He frankly recognized the authenticity of these documents—they were no mere fictitious creations, which he might shape or reject or amplify as he pleased. Fidelity to his material became a matter of artistic conscience with him. Mr. Barrett Browning in his letter [536] confirms the fact of this conscientious

and even painstaking accuracy. The Poet seems to have felt he must be true to the Book in all its details, and that the creative play of his imagination must be ruled by this truth-aspect of the Book. We need not here enter into the general problem as to whether the Poet was acting with highest artistic wisdom in so doing. But we wish to make clear the fact, and the results must either approve or condemn the artist. Consequently we find that Browning, in dealing with the facts of this case, has exercised far less freedom of fancy than did Shakespeare, even when dealing with public and ascertainable history. We well know, moreover, that whatever the poetic truth of the sources of the *Divina Commedia,* the *Aeneid,* and the *Nibelungen Lied,* their actual truth was unascertainable, and the artist was subject to no such rein to his imagination, but was essentially free in his artistry. Possibly this fact appealed to Browning's peculiar type of mind and led him to choose such a subject as *The Ring and the Book* rather than one where there might be less check upon him from the truth of his material. And so, unlike Dante and Milton, Goethe and Shakespeare, he is true not merely to the larger truth of his story, but even to its comparatively trivial details.

Browning's problem and method were not unlike those of the historian. He had a mass of scattered and even conflicting details of fact, with hints of motive and cause. These he must interpret, not to suit a preconceived theory, as did so many of the eighteenth century historians. This older type of history, which preferred the symmetric working out of events in conformity with a preconceived notion, even at the expense of facts, was in Browning's day giving way to a new type of history, wherein the author recognized that he must not distort facts, but must legitimately deduce his principles from his facts—not merely the chosen and convenient facts, but even the stubborn and irreconcilable facts. This change in history was probably occasioned by the growth of the scientific spirit of the century, especially of the strict inductive method of science and of its regard for the integrity of fact. Browning shared this spirit and used the new method of organizing facts which had just been inaugurated among the historians of his day. His artistic method is in part the historic method, but, of course, goes beyond the latter in his consciousness of the moral beauty and of the spiritual meaning of the tragedy, and in his purpose to make the story appeal primarily to the emotions rather than to the mere intellect.

The present source-study, moreover, displays an unusual exercise of the transmuting imagination in its mastery over the crudest and least artistic of materials. The Book is indeed crude, hard fact, which had never been subject to the plastic touch of the artist. The lawyers who wrote it had no other concern than to sophisticate the truth for their own ends. The human element, the spiritual significance, and even the

sensational interest in a barbarous story had not attracted their minds. They apparently destroyed all possibility of art-appeal in the story and were utterly remote from the artist's purpose of pleasing by grace and beauty and power of thought or expression. Poets rarely use such material as it comes roughly from life. The novelist does so repeatedly, and it is the usual practice of a Kipling or a Dickens. But the raw material of the latter is forever dissipated from even the closest research of the critic. We can not follow their processes in transmuting rough life to art. Yet the play of Browning's interpretative and creative imagination upon these crude materials may be studied in full here. Even the crudest of Shakespeare's originals scarcely demanded a more sweeping exercise of creative power and a more subtle, alchemizing touch.

Another unusual phase of this source-material is its minute and reiterated insistence on motive. Browning was always a searcher for hidden and disputable motive. It was this that fascinated him in his early study of Paracelsus. But the famous source-stories of other poets have put stress far more upon action than upon motive. What was done? What was the story that had met the world's eye? In the Book, however, the close and disputed reading of the purpose behind each single incident of the story well fitted this material to Browning's peculiar genius.

Finally, the Book is utterly lacking in an underlying moral truth—a dominant and formative motive. Such a motive is found in the source-books of practically all of Shakespeare's plays, in the Faust legend, in the conception of *Paradise Lost* and of the *Divina Commedia.* The race for ages had been not merely retelling such stories, but had been conforming them to the racial faith, the racial ethics, the racial conception of life and character. There is therefore at hand, all ready for the artist, a larger human truth, which gives majesty to his theme, and which he may adopt or amplify, according to his own vision, as Shakespeare did in the story of Lear. But nothing of the kind was present in the Book. To its collector it had merely illustrated the question as to "whether and when a husband may kill his adulterous wife."[2] Hence the larger truth of these characters found in the Book and of their relationship to one another, the real meaning of the tragedy, had to be supplied entirely by Browning.

V. The Book, its History:

We may now pass on to a more specific account of "the old yellow book." The Poet himself has with unusual vividness described its finding. By no mere chance, but pushed by "a Hand, always above my shoulder" (RB., I, 40), he had discovered it amidst the rubbish

of a market barrow in San Lorenzo Square. This was in June of 1860. That very day the old record fascinated his imagination. And yet, in spite of his immediate interest, he seems almost to have laid it aside for the next few years. A letter of September 16, 1862, speaks indeed of " my new poem that is about to be; and of which the whole is pretty well in my head—the Roman murder story, you know." Yet his purpose to use the material artistically must have been subject to some fluctuation. And he is even said to have turned over the Book to a friend and novelist, Miss Ogle, with the suggestion that she use it in her art. " But," as the Poet casually remarked to Professor Corson several years later, " when she said she made nothing out of it, I wrote *The Ring and the Book.*"

Browning's temporary neglect of the theme was probably due in part to his restlessness and inability to set himself to consecutive work after the breaking up of old habits and of the Casa Guidi home after Mrs. Browning's death. During these years he seems to have devoted more thought to his son than to his poetry. But the Book must have been subjected to many a reading before the Poet made it his " four years intimate," from 1865 to 1868. After the publication of *The Ring and the Book,* the unique old volume was not infrequently shown to the Poet's friends and callers—not " tossed in the air, and caught again and twirled about by the crumpled vellum covers," but handled tenderly, almost reverently.* Late in life he promised it, along with other papers and manuscripts, to Balliol College, Oxford, of which he was an honorary fellow. Mr. Barrett Browning personally carried the volume to Balliol shortly after the poet's death,[536] and there it was finally deposited. The Poet's portrait, from the brush of his son (see frontispiece), shows him in his robes as honorary fellow clasping the Book in his hand.

The Book is not at all a published volume, but is rather a lawyer's file of documents and pamphlets [4 5] bearing on the Franceschini murder trial.

> Fanciless fact, the documents indeed,
> Primary lawyer-pleadings for, against,
> The aforesaid Five; real summed-up circumstance
> Adduced in proof of these on either side,
> Put forth and printed, as the practice was,
> At Rome, in the Apostolic Chamber's type.

---

* Prof. Edward Dowden in a recent letter has said: " I remember an afternoon when Browning put the 'old yellow book' in my hands. He must have felt for it a certain awe as the power that controlled his thought and feeling for so long a time." Dr. Furnivall, on the other hand, writes: " My impression is that when Browning showed me the old yellow book he tost it up in the air." Mr. John W. Chadwick says: " Mr. Browning did not seem at all inclined to toss it in the air and catch it as he does in verse. He handled it very carefully and with evident affection."

Browning suggests that its collector was the Francesco Cencini,[12]

> advocate as well,
> *Socius* and brother-in-the-devil to match,—
> A friend of the Franceschini, anyhow.

This seems probable in view of the inclusion of the three personal letters to Cencini (pp. ccxxxv-xl); and Ugolinucci's letter (p. ccxxxix) speaks of the fact that he had sent on to Cencini the documents, that his friend might have full knowledge of the case.[12] The manuscript title-page (p. i) seems still further to prove that the collector had merely a professional interest in the material; it was for him a noteworthy precedent as to "whether and when a husband may kill his adulterous wife without incurring the ordinary penalty" for murder.[2] The human or ethical side of the tragedy made no appeal to Cencini. The file when completed was part of his law library and not of his personal history. Cencini evidently bound all of this material with a vellum cover to preserve it, and it is this age-yellow vellum which suggested the Poet's name, "the old yellow book." It is small-quarto size, as Browning states,[10] and contains about 250 pages. The Poet's description of the soiled streaks to be seen on many of the pages [8] is but one of many illustrations of his minute accuracy in describing his Book. This is likewise true of the line descriptive of the old letters: "The sand, that dried the ink, not rubbed away." Furthermore, he translates literally the imprint of the pamphlets as he found it: "At Rome, in the Apostolic Chamber's type." And the absolutely convincing evidence of such accuracy in his vivid description of the finding and first reading of the Book is likewise confirmed by the word of Mr. Barrett Browning.[536]

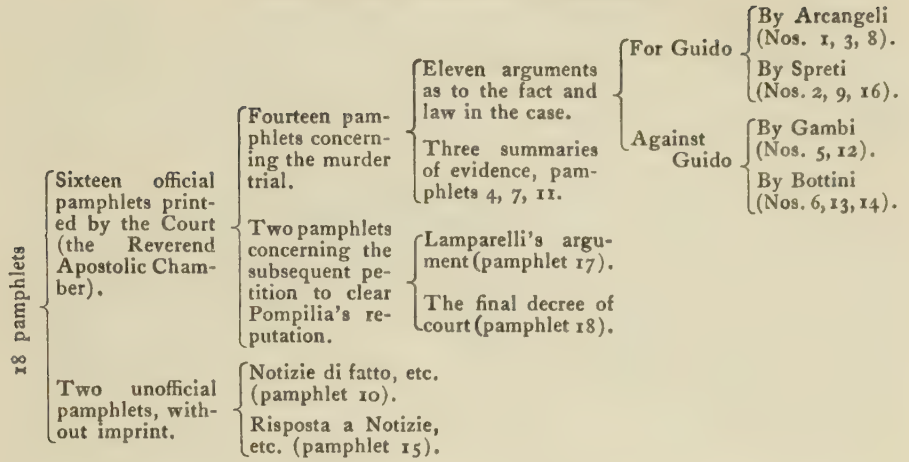
VI. The Book, its Contents:

A description of the contents of the Book as supplementing the Poet's account of it in the first book of his Poem may now be of advantage.

The volume consists largely of eighteen printed pamphlets, and to these are added certain manuscript pages, evidently supplied by the collector of the pamphlets in further elucidation of the case. The manuscript portions include a title-page (p. i), a table of contents (pp. iii and iv); three letters bearing on the case and telling of the final execution of Guido (pp. ccxxxv-xl), and a transcript of the court record of the Tuscan trial and condemnation of Pompilia for her flight from her husband's home (pp. v-viii). This last would be directly accessible to the Florentine lawyer Cencini [12] and possibly was copied out with his own hand.

A subdivision of the eighteen printed pamphlets is given on the following page.

TABLE OF THE PAMPHLETS OF THE BOOK.


18 pamphlets
Sixteen official pamphlets printed by the Court (the Reverend Apostolic Chamber).
Fourteen pamphlets concerning the murder trial.
Eleven arguments as to the fact and law in the case.
For Guido
By Arcangeli (Nos. 1, 3, 8).
By Spreti (Nos. 2, 9, 16).
Against Guido
By Gambi (Nos. 5, 12).
By Bottini (Nos. 6, 13, 14).
Three summaries of evidence, pamphlets 4, 7, 11.
Two pamphlets concerning the subsequent petition to clear Pompilia's reputation.
Lamparelli's argument (pamphlet 17).
The final decree of court (pamphlet 18).
Two unofficial pamphlets, without imprint.
Notizie di fatto, etc. (pamphlet 10).
Risposta a Notizie, etc. (pamphlet 15).

Sixteen of the pamphlets are official and documentary, bearing the imprint of the Papal Court (Reverendæ Cameræ Apostolicæ Typis, 1698).[6] The other two numbers were privately and anonymously printed.

Fourteen of the sixteen pamphlets are concerned with and are a part of the trial of Guido and his accomplices on charge of murder, January and February, 1698;[365] the two remaining official pamphlets, Nos. 17 and 18, have to do with the subsequent petition in court for the clearing from stain of the good name of Pompilia.[454] These fourteen pamphlets include eleven arguments as to the law and facts in the case and three pamphlets of evidence admitted in the trial.

The eleven arguments present to us, as it was originally presented to the judges, the legal battle of the trial. They make little effort to give a consecutive narrative, but are chiefly devoted to the establishing or refutation of certain points of law. Matters of fact appear but fragmentarily, and are then distorted to a particular professional end; the truth of the tragedy and the real claims of justice are of little interest to the contestants. Every energy of the defense is devoted to the establishing of the plea of *honoris causa*,[399] while the prosecution is equally insistent upon the illegitimate delay in taking vengeance,[403] and upon the five technical aggravations of mere murder.[408] The whole is flooded with precedent upon precedent.[378] They show much acumen and no heart, and justify Browning's word as "to the patent truth-extracting process." (RB., I, 1114.)

The three pamphlets of evidence, Nos. 4, 7, and 11, however, which included affidavits, letters and other documents bearing on the case, are more interesting. In them we come in immediate contact with the actors and eye-witnesses of the tragedy. Pompilia and Caponsacchi tell

the sworn story of their flight [18 34] only ten days after their arrest. Fra Celestino, the confessor of Pompilia's dying hours, and his fellow-witnesses testify unanimously and urgently to her purity and Christian resignation.[352 353] A former servant in the Franceschini household bears detailed witness to the meanness and cruelty of the home life in the old Arezzo Palace.[110] Letters of the Bishop [143] and of the Governor [138] of Arezzo sustain Guido's accusation against the Comparini. The love-letters which Guido claimed he had found after the arrest at Castelnuovo, and whose authorship he ascribed to the fugitives, are given in large part.[231 232] All of these matters are of considerable importance in the Poet's judgment of the truth of the case; yet we have undoubtedly lost considerable testimony offered in the murder trial, as several matters of evidence cited or referred to in the arguments are not given in the summaries at hand.[532] Of special importance among these are the confessions of Guido and his fellow assassins, which are given only in brief extracts (pp. cxxvii-xxx). These matters may have been left unprinted by the court, or they may have been purposely omitted by Cencini on account of his regard for the Franceschini family. They are usually referred to by citation of folio or page in the court records, which are now lost. Yet even in its incompleteness the testimony of the Book is invaluable to the Poet's art in remaking his story.

The purpose and authorship of the two unofficial, anonymous Italian pamphlets [55 59] (Nos. 10 and 15) must be judged purely by internal evidence. They were no mere popular narratives of the case, such as a Grub Street pamphleteer would have produced in exploiting a famous contemporary crime. The authors try unsuccessfully to be popular in their style, but their own legal temperaments and attitudes of mind soon prevent the purely narrative and sensational treatment common in pamphlets on famous crimes. The pamphlets were evidently written and printed either by the lawyers in the case, or by some one in their employ. Certain internal evidences, which need not be given here, lead me to believe that they were written by Arcangeli and Bottini themselves. The first of these, *Notizie di fatto e ragione,*[55] attempted to stir public sentiment in behalf of the accused while excitement over the trial was at its height. The rejoinder charges it with attempting "to insinuate a false impression into the dull heads of the crowd." [61] This rejoinder [59] was presented before the same bar of public opinion in the same semi-popular, semi-legal manner. It aimed to disclose ruthlessly the greed and craft of Guido. Both pamphlets were probably distributed throughout Rome and became the food for abundant gossip on this already exciting case. These two pamphlets, in fact, seem to have suggested to Browning his *Half Rome* [55] and the *Other Half Rome,*[59] though the Poet does not in either of these monologues follow closely the fact or line of thought of the corresponding pamphlet; yet there

are many striking correspondences between them which will appear in the corpus of notes at the close of this volume.

The three manuscript letters [9] included in the Book were written, " in hands crabbed enough," from Rome on the evening of Guido's execution. They tell of the delay of three days, February 18 to 21, in favor of Guido, which was finally overruled by the Pope.

> And these are letters, veritable sheets
> That brought posthaste the news to Florence, writ
> At Rome the day Count Guido died.

The first of these is from Arcangeli, and is quoted with close verbal accuracy in Bk. XII, 239;[450] of course, the *" Hac tenus senioribus,"* with what follows, is purely Browning's humorous fiction in keeping with the pleasant rascality of the first lawyer. The other two letters were written by Gaspero del Torto and Carlo Ugolinucci, and have but slight correspondence with the second and third letters of the Poem, though some of the material is used elsewhere by the Poet.[428 429 447-49 451]

Such are the contents of this Book, and they assure the reader that it not only now is, but always has been, a unique volume. Of the manuscript portions, especially the letters, there could have been no duplicate. And very few copies of the pamphlets were probably printed—merely enough for the use of the judges and lawyers and recorders during the trial, and not for public distribution. The history of the Book during " the decades thrice five " from the time it first began gathering dust in Cencini's law library until it fell into the Poet's hands on the market barrow is utterly dark.

From this account of the contents of the Book it is plain that the component parts, while organized partly by the fact that all emanated from the Franceschini murder trial, are from many different minds with diverse attitudes toward the fact in hand. Accordingly, in style, in sentiment, and in mere matters of fact, the various parts of the Book are at odds with one another. The legal arguments, moreover, are fashioned by minds far remote from art purpose or art effect. Their casuistry and sophistry are utterly divorced from such human sentiment as might naturally arise from the case. Pity for the wife, sympathy for the husband, admiration or reprobation of the priest—such natural feelings as we should expect to spring spontaneously from contact with this tragedy—are nowhere to be found in the Book. Wherever there is show of sentiment, its rhetorical parade betrays its insincerity. These lawyers evidently had a job on which to exercise their professional cunning, and they have little conviction as to the rights or wrongs of the case. Such an attitude is as utterly remote from that of the artist as is possible; for to the artist every fact must be steeped in feeling, which must flow from deep wells of emotional life. It is only in the

affidavits of Fra Celestino, of Pompilia, and of Caponsacchi that we find such perennial source of human feeling. For the rest, Browning had to breathe mightily on a valley of dry bones, before these men and women of a former day could stand erect to play over again their parts in that long-forgotten tragedy.

Still further, the style of the Book is in general far removed from such as the artist employs. The testimony is in plain, pedestrian, rather amorphous Italian, rising to effective style only in part in the affidavits of Caponsacchi and Pompilia, while the law Latin partakes of the worst stylistic vices of its technical nature and of its late composition. It is inaccurate grammatically, amorphous rhetorically, and utterly without the lift which a lawyer with good command of language should give to the treatment of a technical subject. Nor are there such brief flights of oratory enkindled with feeling and imagination as might naturally arise in the progress of a case which deals with many of the deepest feelings. All this makes the Book the duller reading to the modern reader and the more forbidding to the artist. Yet Browning was by no means daunted thereby, and rose to some of his own most remarkable flights of stylistic power in retelling the story he found here.

VII. Minor Additional Source-material:

The case, sensational as it was, in its own day, evidently had but the moment's brilliant " usurpature " of the rocket. Soon the story dropped out of the oral and written annals of Rome, so that it left no trace there for the interested search of the Poet (RB., I, 422-56). A friend, however, somewhat later found in London an anonymous manuscript account of the murder (pp. 209-13). This seems to have been written, a few years after the trial, by a man who had no personal knowledge of the case, but who evidently had a leaning toward Pompilia's side of the story, and who had read closely her own affidavit and the second anonymous pamphlet of the Book. It is much more popular in style than the rest of the material described above, and would make a good newspaper story. It was evidently not written with a legal bias. In this pamphlet the Poet found some interesting material not given in the Book. This does not change the bearing of any important facts in the tragedy, but gives numerous descriptive details which were freely used by the Poet. It is probably less reliable as a source of information and evidently misstates two matters of fact from the testimony of the servant Angelica [110]—namely, the Canon Girolamo's attack upon Signora Violante and Signora Beatrice's denial of hot coals for Violante's warming-pan. Nevertheless the Poet accepts it for the purposes of his art, and weaves its details undiscriminatingly with the rest. It is therefore the secondary source of the Poem. It contributes such

interesting details as the name of the babe, Gaetano,[20] the twenty-two dagger wounds of Pompilia,[326] the exposing of the murdered corpses in San Lorenzo,[57] the pursuit, arrest, and final execution of the murderers.[331-42 433-44] Books IV and XII make especially important use of it. The pamphlet was printed privately by the Philobiblion Society in 1870, and has been translated in part by Mrs. Orr in her Handbook. In reprinting it here the editor of this volume has used italics to indicate the portions which present fact not already accessible to Browning in the Book.

Three other fragments of evidence fell in Browning's way. One is a little pen sketch of Guido on a loose sheet of paper, made shortly before his execution; it is reproduced in this volume (p. 275) from the original, now in Balliol College. Another is the water-color drawing of the Franceschini arms, which was sent to the Poet by his friend Kirkup.* It was then pasted on the front inside cover of the yellow book. The Poet reads into this sketch a certain significance; for it is symbolic of the greed and violence of the Franceschini family.[47] And Browning evidently found and used the description of the torture of the vigil in Farinacci.[526 886-9] The Poet assures us in the first and last books of the Poem that he made further search for the fact of the case in the records of Rome and Arezzo, but largely in vain.

Only a few years ago, another Italian manuscript narrative of the Franceschini case was found in the Royal Casanatense Library, Rome. Browning never saw it, and hence it is not a part of the source of *The Ring and the Book,* yet the pamphlet gives some interesting additional information and presents the characters of Abate Paolo and Guido and of the Comparini more fully than elsewhere. In several cases it confirms the imaginary amplifications which Browning made of the data before him. The pamphlet is translated in full (pp. 217-225).

VIII. The Legal History of the Franceschini-Comparini Dispute:

It may be well now, for the sake of elucidating the Book still further, to give an account of the complicated series of lawsuits which preceded and conditioned the murder trial, and which are continually discussed in the course of the Book.

The first of the series was a civil suit brought in the spring of 1694 against the Franceschini by Pietro Comparini, for the recovery of the dowry already paid and for the annulling of the dowry contract.[260] This was brought on the ground that Pietro had just learned, from the

* Barone Kirkup to Wm. Rossetti, Sept. 18, 1868, "Another book of his (Pietro Aretino) is a dialogue on Cards, in which some excellent stories of gamesters are introduced. I sent some of them later to Browning, who is writing a poem relating to Arezzo, in which gambling will make a great figure."

confession of his wife, that Pompilia was not his own child, as he had always considered her. Guido won this case,[263] but it was appealed [264] and remained undecided [265] even to the time of the murders, more than three years later. Part of the evidence included in the summaries of the Book was first used in this trial: namely the testimony of the servant Angelica,[110] the letter written to Abate Paolo,[112] and the letters of the Governor [138] and the Bishop [143] of Arezzo.

Next came the *processus fugae,*[269] the criminal case brought by the Fisc, or the State, at the instigation of Guido, in which Pompilia and Caponsacchi were defendants from the charge of running away and of adultery. This was introduced immediately after their arrest in May, 1697, though it was not until the following September that the court sentenced Caponsacchi [271] to three years' banishment to Civita Vecchia, and remanded Pompilia to the convent of the Scalette [276] as prison, without giving definite decision concerning her. Much of the evidence in the summaries of the Book had been first used in this trial, and then later had been carried over into the murder trial. Such are the packet of forged letters,[232] the affidavits of Caponsacchi [34] and of Pompilia,[18] and of the group of Aretine citizens who swear to the ill-treatment suffered by Pompilia in her husband's home.[111]

Parallel to this suit, but of somewhat later date, was the Aretine criminal prosecution of Pompilia, and of Guillichini [295] as her accomplice, on the charges of flight from her husband's home and of adultery.[294] This was not decided until December, 1697. We know nothing of it except in the manuscript report given in the Book (pp. v-viii). In it strong insistence was evidently made on a preposterous amount of theft on the part of the fugitives.[200] Browning, in the words of the Pope, speaks with strong indignation concerning this travesty of justice, as " that strange shameful judgment, that Satire upon a sentence."

In the fall of 1697, after her imprisonment in the monastery, Pompilia brought suit for divorce from Guido on the grounds of cruel abuse,[266] and he in turn seems to have taken counsel as to whether he had sufficient grounds for divorce from Pompilia;[297] but, as the replies were doubtful, he did not enter further into the suit. The divorce case was still undecided at the time of the murders.

Then there was the murder trial against Guido and his fellows,[365] brought in the Roman criminal courts soon after the murder, and terminating by the sentence given February 18, and the execution February 22, 1698. This is the case presented in the Book. In it the Fiscus,[368] or prosecution, as we call it, was represented by Bottini and Gambi as Advocate and Procurator respectively; while the defense was maintained by Spreti and Arcangeli, Advocate and Procurator of the Poor,[374] respectively. " Poor " means nothing more than " the accused." The *Procurator* and *Advocatus Pauperum* were quite as much servants

of the State as were their opponents, and were in no sense our modern private counsel hired for and by the criminal and his friends.[376]

While the murder trial was still going on, suit was brought against Tighetti, Pompilia's trustee and executor, by the monastery of the Convertites.[364] By law they could claim the property of any woman of evil life who died within the city of Rome. Tighetti seems to have been harassed at this same time by the Franceschini, who were trying to seize the dead Pompilia's property. So he met these attacks by claiming, through his counsel Lamparelli in pamphlet 17, a court declaration of Pompilia's good fame, which would free him from these lawsuits. This decree was finally given in pamphlet 18, in September, 1698,[456] and with this decree the legal history of the Book comes to a close.

IX. The Order of Proceeding in the Murder Trial:

We need also to speak of the order of proceeding in the murder trial, and this the more as the pamphlets in the Book are not arranged quite in their chronological order. To avoid the confusion which might arise therefrom, the probable order, as based upon internal evidence, is suggested.

The trial evidently began in the month of January,[365] only a few days after the murders. There seem to have been two distinct stages of the trial.[524] In each of these, contrary to the English practice—the practice of the Common Law—the Defense speaks first[367] according to the practice of the Civil Law. Arcangeli doubtless opened the debate by pamphlet No. 1, which he prefaces by a connected statement of the facts in the case. He was supported in this by Advocate Spreti in No. 2, and added a word in behalf of the fellow assassins in No. 3. The case for the Prosecution, on the other hand, was evidently opened with the statement of fact made by Gambi in No. 5. This was seconded by the two arguments of Bottini, Nos. 6 and 14. These six arguments are based on the two summaries of evidence, Nos. 4 and 7.

This first stage of the trial seems to have been unsatisfactory to the Prosecution, and the torture of the vigil[526] was now demanded that the case might be the plainer. For Guido had confessed only that he had given orders to mutilate and not to kill, and had also qualified his confession in other ways. The Defense strongly resisted the infliction of such cruel torture, but were unsuccessful, and Guido and his associates were tortured anew before the second stage of the trial opened. A more extended account of this debate and of the particular nature of the torture of the vigil is given in Note 526. Evidently a much fuller confession was received from the accused on this reëxamination under torture.

The second stage of the contest was far more searching and more skilful on both sides; we have here the really formidable legal meeting. Franceschini's case was again presented by his two lawyers in Nos. 8 and 9. In response to these Gambi prepared brief No. 12 in three hours, as he declared; while the most important word for the Prosecution was now spoken by Bottini in No. 13. This last pamphlet contains reference to the third Summary, No. 11, which must have been made up after February 9. The final word in the trial was the rebuttal made by Spreti, No. 16. A missing argument for the Prosecution, mentioned in Ugolinucci's letter (p. ccxxxix) seems to be still lacking.

The case then passed to judgment, and the accused were found guilty by the board of judges, and were sentenced on Tuesday, February 18, 1698,[432] to death, "by heading or hanging as befitted rank." We learn from letters of a subsequent delay of three days for appeal to the Pope on the ground of Guido's "clericate."[42] This was overruled by the Pope on the 21st, and the sentence of the court was executed upon the criminals the next day.

X. Browning's Peculiar Interest in his chance-found Material:

Such was the treasure-trove found by the Poet that June day—

> This is the bookful; thus far take the truth,
> The untempered gold, the fact untampered with.

Nor could the Book have fallen to a more interested reader. With eyes riveted on its pages, he made his way home to Casa Guidi, and there all day long continued to pore over its pages till

> The book was shut and done with and laid by
> * * * * *
> And from the reading, * * *
> I turned, to free myself and find the world.

As he stepped for a breathing-while out on the little terrace, the inert materials of the Book were kindled to a new life by his imagination until

> then and there
> Acted itself over again once more
> The tragic piece.

The inert chaos of the Book had become a vital cosmos—those long-forgotten names were once more living persons to him, and their tragedy was athrob with meaning. The tragedy was now potentially recreated. The Poet never lost the exhilaration of his creative mastery of the Book, which he felt the first night of his acquaintance with it.

Nor is it difficult to see that in many ways the Book was such as to appeal strongly to a man of Browning's peculiar temper of mind.

Since early boyhood he had delighted in out-of-the-way, forgotten books, in dusty memorials, in nondescript records of all kinds. His father's shelves were rich in quaint treasures exhumed from bookstall rubbish. *Sibrandus Schafnaburgensis* lets us share the Poet's humorous resentment against the leaden stupidity of one volume of this kind. *Transcendentalism* was probably the outgrowth of another such experience. In fact, Browning's recondite and curious reading was of almost unparalleled extent. From rusty folios he had exhumed his Paracelsus, while still little more than a boy, and had made those old records the basis of the greatest of his earlier poems.

He went to such soiled volumes with a stout heart and a strong brain, well fortified against their crude stupidity. For, deeply bedded in them, he sometimes found golden veins of true humanity; at some point or other, vital thought or passion might greet his search. Such chance gains were doubly precious to the Poet, and had in them the gambler's exhilaration besides; researches of this kind were peculiarly characteristic of his mind and art. In the Book he found material that was unusual enough; yet it was filled with humanity, " red ripe at the core."

We are also informed in Kegan Paul's *Memories* that Browning was acquainted to the minutest detail with recent famous criminal cases.* It is hardly necessary to point out that this was from no thirst for sensationalism, but as a searcher of the human heart he was profoundly stirred by the underlying motive of the criminal. What do these bad hearts mean? What place have they in God's world? How can the all-powerful and all-loving Father permit his children to plunge into such an abyss of evil? Browning was an optimist, not because he shut his eyes to the villain and the brute in human nature, but because he would find even for them a place in his rational explanation of God's world. Mark how he lingers over the suicides in the " little rustic morgue," and note the closing stanza of *Apparent Failure*. Moreover, the salvation of Ned Bratts, grotesque as may be its manner, has a profound place in Browning's thought of God and man. The murderous lust of Ottima and Sebald is finally pierced by a ray of light: " God's in his heaven, all's right with the world." Crime is far too important a fact in life for the poet of man to ignore it; he will " paint man, whatever the issue." Hence this story of Guido's brutal greed, this dark record of crime, proved strongly attractive to Browning, not

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* On one occasion, at the table of Mr. Leighton, father of Lord Leighton, the conversation turned on murder, and to the surprise of everybody Mr. Browning showed himself acquainted with the minutest details of every *cause célèbre* of that kind within living memory. He quoted a ghastly stanza on Thurtell's murder of Mr. Weare:

His throat they cut from ear to ear
His brains they battered in,

and was rather piqued that another guest was able to complete the lines with

His name was Mr. William Weare
He lived at Lyons Inn.

for its sensational interest, but for its profound spiritual meaning. In his *Red Cotton Night Cap Country,* he again seized a subject of this kind, but failed to interpenetrate it with his own master power, as he did this sordid tragedy.

It is also possible that Shelley's example in handling the somewhat similar Cenci story may have given an additional interest to the Book. Browning well knew the work of Shelley and the popular celebrity of the story. Though Shelley had been stimulated by the supposed portrait of Beatrice, he had also drawn his facts from a contemporary pamphlet. In fact the famous murder trial of Beatrice is cited as a precedent in the course of one argument of the Book (p. ci). However this suggestion of the value of the material may have operated on Browning, he is utterly independent of the example of his predecessor in his art of using the story of the murder.

Yet all these sources of interest in the Book seem quite secondary to the Poet's recognition of Pompilia and his eager desire to clear her memory. Mrs. Orr has said that Browning was brotherly rather than chivalrous to the women of his acquaintance, and they were many. Yet one can not doubt the fine chivalrous attitude of Browning toward the women of his own creation. He is ready to believe in woman, to defend her, to shield her from misrepresentation, to have faith in her heart. His bad women, such as Ottima and Lucrezia, stand out all the more prominently because they are exceptional and because they are so gross a perversion of woman's true nature. Woman is normally a help and an inspiration, yes, and a quickener of spiritual perception in the more obtuse nature of man. Browning's love poems are full of the thought which culminates in *By the Fireside.* Women like Pompilia, who were the victims of hard conventionalism or of the brutality of man, always had his heart's sympathy, as we can well see in *The Flight of the Duchess, A Blot in the 'Scutcheon,* and *My Last Duchess.* How true his chivalry rings in *Count Gismond* and *The Glove!* In the last, Browning was dealing with a story centuries old, and its various versions closed with the glove flung straight in the lady's face, and a moralizing tag appended:

> **Not love, quoth he, but vanity,**
> **Set love a task like that.**

Browning's own glove of challenge was as prompt in reply as Count Gismond's, and in the sequel which he has indignantly created he gives De Lorge his due, while the lady is borne off by the page to live a life of true love. But we have said enough of this chivalry of Browning as a creator of women. In reading the Book, he found a girl, a child-mother, wronged. The lawyers on both sides had used with little reverence the " lily-thing to frighten at a bruise." They spoke of her as a " wretched child " and " unfortunate girl," but they were solely intent

on their technical pleadings, and not the slightest drop of human pity warmed their hearts. But behind this grim record of cruelty and greed, on suggestion of the affidavit of Fra Celestino,[353] Browning perceived her woman's soul; she had been misjudged, she lay all undefended—a Browning to the rescue! Not that he would misrepresent the truth for her sake, but to his perception her case was all-sufficient in its bare truth. His prepossession, like that of *Other Half Rome,* would right her, and it doubtless had fully as strong conviction of its rightness. It had also the advantage of being by one of the most searching and most truthful of human hearts. Yet he did take sides, and his faith in woman made him take the woman's side, whether he would or no. This chivalry, I feel, more than anything else, occasioned Browning's prolonged creative activity upon the story and governed his whole attitude toward his material; and this, in all probability, sprang in almost instant impulse when he first " fused his live soul " with the Book, and when for the first time the tragic piece acted itself over again before his mind's eye. Browning was as truly and as promptly Pompilia's lover as was Caponsacchi.

Nor do we sympathize with the paradox of Mr. Chesterton that Browning said: " I will show you the story of man and heaven by telling you a story of a dirty book of criminal trials, from which I select one of the meanest and most completely forgotten." Something more than meanness and pettiness drew his attention; it was a story of a suffering woman, cruelly tormented by her husband, who was backed by all conventional society. In fact the case seemed all but hopeless for Pompilia, for by the custom and morals of the society in which she lived there was naught for Pompilia to do but submit, and her slightest resistance would have seemed censurable by those standards. And yet God's hand had brushed aside all cunning contrivances of man and had rescued her by the agency of the hero-saint Caponsacchi. It was both a tragedy and a triumph, capable of moving pity and terror and exaltation. It was neither petty nor trivial, even though its actors were not kings and though its stake was only a woman's body and soul.

XI. The Choice of an Art Form:

When Browning had determined to give full expression to himself through the material of the Book, he must have faced very early the question of artistic form. Should he make of it drama or epic or romance or novel? Shelley had used the drama for the Cenci story, and there were marked dramatic possibilities in the catastrophe of the Franceschini; but the drama had been abandoned twenty years previously by Browning, after he had fairly tested his power of expressing himself through its means. That he also recognized the novelistic possi-

bilities of the material is evidenced by his giving it to Miss Ogle. Behind Pompilia he saw the panorama of the environing conventional society, with its trafficking for dowry, its cynical unfaith in purity, and the dominating presence of a worldly church and a selfish churchmanship. The tragedy lay too deeply rooted in that society to be divorced therefrom, and Browning knew that particular world, with all its types and ideals, as few men have known it. He must have seen an historical novel in the making, and it was truly there. His own results indeed have something of the novelist's arts in them—in fact the poem is novel, as much as it is epic or drama. Yet Robert Browning was not a novelist but a poet, and instead of experimenting in a new art, he did what he had so often done, modified his " art familiar " to adapt it to his new theme, and the form he adopted drew much suggestion from the well-elaborated technique of the novel.

Browning was within certain limitations a very prolific creator of poetic forms. He scarcely ever departs from the drama or the dramatic monologue, but he has modified them with much variety. He was never conventionalized nor stereotyped in his art, either by the tradition of other artists or by his own achievements, and his successes did not repeat themselves. *Paracelsus* was warmly praised by his small circle of admirers, and he himself prized *Pippa Passes* highly, but neither of them is repeated. We wish in vain for a repetition of the mad-cap balladry of *The Pied Piper,* or the swift-thrilling power of *The Flight of the Duchess.* His own words in *James Lee's Wife* are apropos:

> Nothing can be as it has been before;
> Better, so call it, only not the same.
> To draw one beauty into our hearts' core
> And keep it changeless! such our claim;
> So answered,—nevermore!
>
> * * * * *
>
> * * * Rejoice that man is hurled
> From change to change unceasingly,
> His soul's wings never furled!

In *The Ring and the Book,* indeed, he merely modifies his familiar art of monologue writing to suit his material. The single monologue would be far too narrow. No one point of view could include all the facts in the case, much less deploy the whole range of motive surrounding the tragedy. There must be room not merely for the main personages, but for the environing society with its motives and ideals. There must also be opportunity for the revelation of the souls of the actors, for in his dedication of *Sordello* (1863), written when *The Ring and the Book* was being planned, he says: " My stress lay on the incidents in the development of the soul; little else is worth study. I, at least, always thought so." Browning's method of using the well-tried mono-

logue to retell the Book is simple but effective. He marshals the tragedy through ten successive monologues and adds the necessary prologue and epilogue. In the monologues of the actors themselves he could present the passionate heart of the tragedy; in the rest he could give its environment and interpretation. Nor could Browning, with his own unflagging interest in the play of human motive, have anticipated the oft-repeated criticism of excessive repetition. Effective as the device is, however, Browning never again uses the monologue in this way.

XII. The Ten Monologue Plan suggested by the Book:

We may add still further that the suggestion of this art form lay plainly in the Book itself. There we read the professionally biased arguments of the lawyers, the more violently prejudiced, popular Italian narratives (suggestions of *Half Rome*[55] and *Other Half Rome*[59]), and the affidavits of Caponsacchi, Pompilia, Fra Celestino, and the housemaid of the Franceschini. All these phases of truth lie side by side in the Book, illustrating the many ways in which the fact of the story may be told. Browning saw therein that truth is many-sided, and that certain phases of the truth would meet the eye of *Half Rome* which would be unseen by Caponsacchi. If then he desired to tell the whole truth of the tragedy, the variety of these accounts in the Book itself must have forced upon his attention the real power of this method in presenting many-sided truth. If he should tell the story from one standpoint only, he would fail of truth, no matter how conscientious he might be. For to use the words of Merlin in his riddling triplets: "The truth is this to me and that to thee." Let the reader think deeply upon his two figures of speech in Bk. I, 1343-78, before adjudging the plan of this monumental poem. And, may I add, we should utterly abandon the search for conventional epic form in a poem which is epical only in length.

When Browning had adopted the multiple-monologue form, why should he use ten monologues, neither more nor less? Was he padding out to reach the conventional twelve-book epic, as Tennyson divided one of his *Idylls of the King* for that purpose? Are the lawyer's monologues, as is often charged, unnecessary? If mere pleasant reading is the end, possibly so; but they are as essential to the architecture of the poem as are the other eight monologues. More than thirty persons are named in the Book. Browning assigns monologues to only six of these, but quotes from several others, such as Abate Paolo, Fra Celestino, and Violante, in such a way as to throw light on their characters. We might well listen to the complete version of the story from any one of these. Browning has also added the purely hypothetical and typical personages of the first three monologues. We feel, however, that the ten mono-

logues need no eleventh, nor could they be cut to nine. Browning himself has pointed out his three groups of three each, the actors, the law, and Rome's gossip. If this tragedy is to be understood with its environment, all of these are necessary.

Browning chose as speakers three actors of the story, and three only, because he saw that the heart of the strife lay between Guido, Pompilia, and Caponsacchi—his ideal villain, his ideal saint, and his ideal hero. Their moral and spiritual relationships with one another were the real tragedy and triumph, both in the fact of life and in the ideals of art. The families of the Franceschini and Comparini, and all other persons in the story, were merely accessories thereto. It was inevitable, from his very material, that Browning should make the monologues of Guido, Caponsacchi, and Pompilia the center of power and interest alike in his poem. The triangular plot, moreover, is common enough in Browning, as in all literature. It is exemplified in *Colombe's Birthday, The Return of the Druses, In a Balcony, A Blot in the 'Scutcheon, King Victor and King Charles, A Forgiveness,* and the *Inn Album.* The monologues of Violante, of Abate Paolo, of the Bishop, of Fra Celestino might have been made very interesting in themselves by such a searcher of soul as Browning, but they would have diverted attention from the essential interest of the plot, namely the relationship of the husband, the wife, and the St. George of the story.

Then, as to the reason for three official monologues, we must remember that the Book is the statement of a law case and is not a tragedy. Much of the fact as regards the main actors came to Browning filtered through the prejudiced arguments of the lawyers—so shrewdly sophistical, but so untrue. Browning was in no mood for such jugglery with the truth, and the vials of his ironical wrath are poured abundantly on the " truth-extracting process? " The presence of such a conventional institution of law, so far removed from real justice and truth, was one of the profoundly significant aspects of this tragedy in real life. Pompilia's position was all the more helpless and her rescue the more desperate because of it. The historic atmosphere was conditioned by its method of argument. Hence Browning chose a sample speech from each side of the murder trial. He reproduced in Bottini and Arcangeli, with all possible fidelity, the impression these lawyers in the Book had made upon himself. The ineptness, the heartlessness of the law, had indeed made the tragedy all the darker. Unwilling, however, to leave the matter thus as an occasion for bitterness over the failure of human justice, Browning confronted the lawyers with a third official verdict—one suggested by a mere hint in the Book—one that had not merely come from a seat of authority, but from the heart of a great, good, wise man. Therein the Poet gave his own most deliberate verdict in the case. Truth's debasement as well as its exaltation in the human insti-

tution of law were absolutely essential to the truth of the story as the Poet had found it; for had not the right triumphed, and had not Guido, probably to the surprise of his contemporaries, finally been brought to justice? This, as Browning felt, could have been achieved only by the divine interposition of God's representative in the Pope.

Official judgment of the case of Guido, Pompilia, and Caponsacchi lay plain upon the face of the Book. But Browning's knowledge of human nature gave him no less confident assurance of the abundant gossip that swept over Rome and swirled around the actors, in this as in all the tragedies of life.

> The world's outcry
> Around the rush and ripple of any fact
> Fallen stonewise, plumb on the smooth face of things.

This was also suggested by the two popular pamphlets [55 59] with their leveling of the case to the gossip-loving Rome—that outward world which had been potent in forwarding the tragedy. For that gossipry had watched with gusto the mud-flinging of the Franceschini and Comparini; they had been a heartless barrier-wall around the struggles of Pompilia to escape; they had enjoyed the rankling gibe against the Franceschini, and had sneered cynically at the Christian heroism of Caponsacchi and the saintly purity of Pompilia. In fact, to them the catastrophe itself was little more than a delicious piece of sensationalism. Not that this environing world was malicious or depraved—it was merely human in its weaknesses. Browning had often presented a past social condition through typical personages. Ruskin in speaking of *The Bishop Orders his Tomb* says: "I know no other piece of modern English, prose or poetry, in which so much is told of the Renaissance spirit—its worldliness, inconsistency, pride, hypocrisy, ignorance of itself, love of art and of good Latin." The Poet presented many such typical personages in *Bells and Pomegranates—The Soliloquy in a Spanish Cloister, A Toccata of Galuppi's, Johannes Agricola, The Grammarian's Funeral,* and many others. When Browning, therefore, saw the need of presenting the Rome and Arezzo of the late seventeenth century as an environment of his tragedy, a necessity for any true presentation of the story, he chose three typical personages and named them in such a way as to emphasize their purely typical significance. They interpret the spirit of their day and prepare the reader for an intelligent understanding of the words of the main actors who follow.

It may be well here to point out the fact that in his purpose not merely to tell a story but to explore all its ramifying motives and effects, to reproduce the intricate cross-play of many minds in a story, the Poet has conceived these first three monologues with much skill. And it is quite impossible to divide off the important later monologues for sep-

arate reading, as a really effective whole. In the economy of his Poem as a whole, the narrative of fact is presented fully in *Half Rome, The Other Half Rome,* and *Tertium Quid.* Still more, in these monologues the author inserts certain passages, which are distinctly preparatory for the later and fuller study of the three main characters. Bk. III, 839-867, is a preparation for the understanding of Caponsacchi at the opening of his story, while 1340-1375 offers characteristic sample speeches of both Pompilia and Caponsacchi. Bk. IV, 581-627, in like manner gives us a preliminary word from Guido. The Poet thus prepares one who reads the poem in regular order, not merely to listen to the story from the chief actors, but to understand their hearts by the interpretation they offer for facts already known. Not the fact but the meaning of fact in character is thus emphasized in the three main monologues. The Poet is also able, through this device, when he comes to the most important portion of his Poem, to skip from one significant fact to another, without dwelling on the necessary narrative details which would otherwise demand room, but would hinder the mere character study. These three earliest monologues are of great importance, indeed, in giving the whole environment which surrounded and almost controlled the life of the main actors.

This choice of the multiple monologue form was also well adapted to preserve the Book in all the fullness of its internal discrepancies of fact and motive. The Poet found each act, each event, subject to interpretation and counter interpretation. Guido's lawyers branded as a lie Pompilia's evidently mistaken statement that in her flight she had reached Castelnuovo at dawn and had been there only an hour when overtaken.[212] The Prosecution, on the other hand, while acknowledging the falsity of the statement, finds casuistical excuse for it. Browning felt that both were wrong, and that the real Pompilia had told no conscious falsehood. Here, then, were three different interpretations of the one fact, all necessary for the presentation of the full truth. How could the artist do this in any straightforward narrative form? He would have to choose but one interpretation, and his very choice, the Poet felt, would be an untruth. He accordingly devised this multiple monologue form for this very end. In the repeated monologues, he could easily find room for even the most antithetic interpretations of fact and motive. And he thus threw the final choice of alternatives upon the reader, who became, as it were, the spectator in a living and moving tragedy where all the rights and wrongs of the case were still left undecided, and where truth was still changing and variable because alive.

It is thus evident that the Poet's choice of form was conditioned and governed by both his raw material and his purpose; and he has therein achieved a masterly success in form and organic wholeness,

which is one of the most difficult feats for the writer of a long poem. Yet he has been a law unto himself in this matter—looking not to established successes of the past, but working out his own problem with rare originality and power. He abandoned the prestige of the epic, of the tragedy, and of the novel, and established a new genre which must be judged by its effect and power, and not by any long-established rules of art.

XIII. Browning's Fidelity to the Fact of his Source-material:

We turn now to the all-important question of how the Poet deals with the fact of his Book in creating his masterpiece. No one can read the Poem and its source side by side without meeting many illustrations of the minute and accurate use of his original. Scores of trivial details have been governed, perhaps unconsciously to the Poet, by the Book. Browning must have been saturated with the Book * before he began writing the Poem, so that the facts marshaled themselves swiftly and without effort into their places in his story. The body of notes at the end of this volume offers hundreds of examples of such use of fact. The names and characters, the dates, the events, the situations, and motives, the very turns of expression in the Poem, are continually drawn from the matters of fact in the Book. Browning's debt in these respects can scarcely be overstated. On the other hand the passion of the story, as Browning has conceived it, the spiritual meaning of the tragedy—all the real poetry—are created by the Poet. They are created, however, in strict accordance with the detail fact in the Book. In few cases, indeed, does the Poet violate the ascertained fact of his sources, even in his freest range of creation.

In the matter of the chronology of the tragedy he is almost painfully accurate to the Book. The story therein is definitely dated in most of its detail, though these time-references are much scattered. It is evident the Poet has mastered all these dates carefully. He is studiously accurate whenever he mentions in his narrative the time of day,[187 188 211 320 347] the days of the week,[184 301 432] the seasons of the year,[85 155 319 431] intervals of time,[43 98 194 285 290 300 303 350 373 436] or ages of persons.[44 64 86] The two opening lines of Pompilia's monologue, which give her age, are accurate to the day.[15] Her words, " there wants of it two weeks this day," afford a characteristic example of how he remains true to fact even when athrob with the deeper spiritual passion of the poem; for this touch is expressive of the deep yearning of Pompilia for her absent babe.[23] Caponsacchi's statement, " there's new moon this

* Orr's Life, p. 409: " He had read the record of the case, as he has been heard to say, fully eight times over before converting it into the substance of his poem."

eve," [185] and "Easter's past," [175] had evidently been verified by the Poet. His "Jubilee gave the hint" [102] is from the Book. In one case he has intentionally changed a date—that of the flight of Pompilia and Caponsacchi from Arezzo, but this was for a definite artistic purpose.[184] These minute accuracies had become a habit of Browning's mind in dealing with the story, and characterized his art in his poetry generally.

The names of places, of streets, of buildings, and of institutions connected with the story are found by the Poet in his material, and are not ordinarily supplied by his own imagination. The line of march to Guido's execution is literally translated.[440] Not a single important locality has been added by the Poet, though he has often elaborated the mere name as he found it, with abundant descriptive detail. For this purpose Browning had evidently visited all of the localities of the story, to gather local color, and he describes such places with his eye on the object.* This is to be seen in his account of the inn at Castelnuovo,[210] San Lorenzo Church,[529] the Pieve,[27] and the Piazza del Popolo.[442] Other localities of but minor importance are likewise drawn from the Book, such as the villa of Vittiano,[311] the New Prisons,[255] the Convent of the Scalette,[276 278] the home in Via Vittoria,[66] the barber shop in Piazza Colonna,[78] and the Torrione.[189]

Furthermore, the names of the persons as given in the poem are found in his original to the number of thirty-three. The only names (except historic names which are sparingly and unimportantly used) that are added by the Poet are those of Luca Cini (II, 118), of Canon Crispi (VI, 1114), and of Curate Carlo (II, 159), all of them utterly unimportant. Even such trivial personages as the priest Romano,[144] Curate Ottoboni,[25] Monna Baldi,[53] Count Tommaso,[48] and we might add the nameless hairdresser [78] in Piazza Colonna, are drawn from the Book. The eight-year-old curly-pate who is so interesting to Arcangeli is of course fictitious, but he is named for his father Hyacinthus, or in Italian, Giacinto.[375] All of the thirty-three persons named fill practically the same place in the story of Book and Poem alike. One may compare with this the practice of Shakespeare, who rejects or adopts the names found in his sources with utter freedom.

Moreover, the turns of expression and the choice of words in the Poem are not unfrequently governed by those of the Book. Such words as relegation, summary,[5] quality,[408] circumstance, instrument,[456] index,[13] calash,[192] used in unusual senses are mere anglicizing of definite

* "A favor, if you have time for it. Go into the Church of San Lorenzo in Lucina in the Corso and look attentively at it, so as to describe it to me, on your return: The general arrangement of the building if with a nave—pillars or not—the number of altars, and any particularity there may be—over the High Altar is a famous crucifixion by Guido. It will be of great use to me. I don't care about the outside." Postscript of Browning's letter to Leighton, October 17, 1864 (Orr, p. 413).

originals, as may be seen by the note references. The reference to Guido as Sir Jealousy [239] is drawn directly from Il Geloso, the Commissary [226] from Il Commissario, the Convertites [277] from Convertitæ, Vicegerent [268] from Vicegerente, and the Public Force from la Forza.[225] The expression " at the seventh hour," [187] for one a. m., is drawn from *alle sett' hore;* " 'Tis one in the evening " [320] from *Un' hora circa di notte;* and " my life not an hour's purchase " [250] from *La mia vita era a hore.* In each of the three the Poet borrows the Italian idiom just as he found it. Still further the Poem affords several illustrations of his use of the speech of one of his characters practically as it had come to him. In such instances, however, he charges the commonplace phrases of the original with a new meaning and fits them into his own sinewy style—an interesting proof of his power as a stylist. Such is the explanation of the

> Oh Christ, what hinders that I kill her quick ?[132]

of the

> Tell him he owns the palace, not the street.[130]

and of the

> I have saved your wife from death.[220]

(Cf. notes 153, 330). Books VIII and XII of the Poem make extensive use of the source-material in this way. Here the Poet even governs his choice of words in his translation by those of his original, frequently using etymological derivatives at the expense of normal English.[439] A good example of this is seen in the story of Samson repeated by Browning, VIII, 644-651.

> Blinded he was, * * * * *
> *Intrepidly* he took imprisonment,
> Gyves, stripes, and daily labour at the mill:
> But when he found himself, i' the *public* place,
> *Destined* to make the common *people* sport,
> *Disdain* burned up with such an *impetus*
> I' the breast of him that, all the man one fire,
> *Moriatur*, roared he, * * *

The italicized words are taken directly from the Italian *intrepido, destinato, impeto,* etc., of the account of the first Anonymous Author, B. 124:

> He suffered with an intrepid mind the loss of his eyes and other grievous disasters, but when he saw that he was destined to serve as a pastime in public places, and when he there heard the jeers and derision of the people, the anger in his breast was so inflamed, that, all madness and fury, he cried out: " Let me die," etc.

In fact almost everything from lines 587-681 is thus closely paraphrased.[476-83] Instances of such close paraphrase are found scattered

here and there throughout the Book. Such is the Poet's paraphrase of the title page of the Book,[2] of the letter to Abate Paolo,[112] of the scraps of love-letters,[159 161 237–41] of Caponsacchi's retort during cross-examination,[244 246] of his decree of banishment to Civita Vecchia,[271] of Abate Paolo's final distress,[305] of the words of Confessor Celestino,[354–9] and of the final decree of court.[456] The question will doubtless be raised here again whether such cutting of rough material into iambic pentameter is art, but we defer discussion.

This may naturally lead to the abundant law Latin, which has been the despair of many a reader of Book VIII, and which is found occasionally elsewhere. The Latin is not invented by the author, but is taken almost entirely from the Book, and its presentation in Book VIII is perhaps part of the truth of the impression of the Book upon Browning's Latin taste. In it he holds up the ignorant stylistic arrogance of the Book to ridicule. This monologue quotes the crude book Latin fifty-six times [461–513] in quotations of widely varying lengths, drawn from all parts of the Book. The exactitude of the reproduction of these shows that they were not merely stray scraps that had clung to the memory, but were carefully copied by the Poet. In one case he made the mistake of reading *via* for *ira*,[503] but elsewhere his modifications are slight, only such as are needed to fit the passage to the meter or context of the Poem—such as the substitution of antecedent for pronoun, changes in number or tense of words found, infrequent substitution of a synonym of different number of syllables, or slight omissions for the sake of brevity. One of these passages, the magniloquent peroration of Arcangeli's final argument,[513] is produced through a hundred lines as the peroration written by the Arcangeli of Browning's creation. This Latin the Poet translates or paraphrases with considerable freedom, allowing his sense of humor to add many a sly quirk, or his sense of irony to thrust home effectively. In fact the student of the monologue may gain certain side-lights on the character of the lawyer by the flavor of these paraphrases. In such work, of course, it is the subtle intellect of Browning rather than his creative passion which is speaking, and this phase of his art is undoubtedly on a lower artistic level; and yet to Browning it was essential to his conception of the Poem as a whole, as it was a reproduction of the effect of the real Arcangeli upon himself.

In the legal lore and technical legal phraseology so abundantly displayed throughout the Poem, and especially in Books VIII and IX, the Poet evidently depended very largely upon what he found in the Book. This display of out-of-the-way technical lore has perhaps caused some readers to stand in awe of the learned acquirements of Browning in the ecclesiastical law. But the study of the Book makes it evident that he learned almost all of his law from the Book and

learned some of it amiss. The various points of law [223 298 362 400-24] made in the Poem are taken from the Book, and also the terms *usufruct* [68] and *domus pro carcere,* [286] the reiterated plea of *causa honoris,* [399] the discussion of the bearing of a murder *ex intervallo* and *incontinenti* [404] and the various ramifications of these two. [406 407] Likewise every point in the discussion of the technical aggravations [408-420] of the crime was found in the Book. All legal precedents and authorities cited [379-85 394-8] were drawn by the Poet from the same treasury. It may be well to cite one of these transferrings of a point of law and a case from the Book to the Poem. [412] In RB., VIII, 1146-52, we read

> Suppose a man
> Having in view commission of a theft,
> Climbs the town-wall: 'tis for the theft he hangs,
> * * * * * *
> Law remits whipping, due to who clomb wall
> Through bravery or wantonness alone,
> Just to dislodge a daw's nest, plant a flag.

This is, of course, but a vital, semi-humorous paraphrase of Arcangeli's words (B. 101):

> "Thus if one wishing to commit theft, climb over the walls of the city, though he could commit that deed without the crime of crossing the wall, (which is a very grave crime), even then only a single penalty, namely that for theft, is inflicted, as the crime chiefly in mind."

Such examples are multiplied abundantly in the notes.

I find but one proof of the Poet's having traveled beyond the Book for legal information and this is in his finding in Farinacci the description of the torture of the vigil, [526] which is mentioned but not described in the Book.

We have here an interesting example of how easily and thoroughly a master artist may gain sufficient technical lore, even in a difficult field, to astonish his critics. And this may perhaps offer a striking truth to those who guess at Shakespeare's occupations by his chance references to technical subjects, no matter how accurate they may be.

XIV. The Comparini-Franceschini Story as Found in the Book:

Practically the whole story of the Franceschini and Comparini, in all its detail, is likewise taken from the Book, where the Poet found it, not as a connected narrative, but usually in fragmentary fact. The three Italian pamphlets, especially the one not found in the Book, are more largely narrative. But the Poet does not follow any of these exclusively in creating his own story. It may be well to bring home this truth by giving here the connected story of Pompilia, with citation for each incident to the proper topical note.

Guido Franceschini, of a poor but noble family of Arezzo, had been dwelling in Rome for many years [43] as a dependent upon one of the cardinals.[39] When finally dropped from this service,[41] he determined to provide for himself by making a marriage which would bring him a good dowry.[76] On the hint of a certain hairdresser,[78] and with the aid and counsel of his brother, Abate Paolo,[50] who was much more successfully established in the Church than himself, Guido made advances [76] for the hand and the dowry of a certain Francesca Pompilia, the thirteen-year-old daughter of Pietro and Violante Comparini.

The Comparini were of the well-to-do middle class [63] in Rome, with property of 10,000 to 12,000 scudi,[67] besides a certain inheritance left to them in entail, the income or usufruct [68] of which was their own in part,[70] and would be theirs absolutely in case they had a child. But they had been married many years and had reached middle life,[64] and still no child had been born. Certain financial reverses [72] brought home to them bitterly the limit upon the usufruct, and they were so reduced that Pietro had to ask the Papal alms.[73] Under this difficulty Violante formed a plan to relieve their distresses. She made pretense of pregnancy [103] and then, by the connivance of the midwife, presented to her husband the girl babe of a common strumpet.[105] Her trick evidently succeeded, as Pietro believed the child was his own and enjoyed the considerable financial advantage arising therefrom. It was this child, now grown to the age of thirteen, who attracted the attention of the Franceschini brothers. For as she was sole heir of the property, and as the parents were well advanced in life, it must have seemed to them quite an eligible match.

When they had made advances to the Comparini, Violante's head [79] seems to have been turned immediately by the thought of her daughter marrying a nobleman.[80] She evidently added her insistence to that of the Franceschini, and they induced Pietro to sign a marriage contract, granting a dowry of 2,600 scudi.[91] But when Pietro found out by inquiry that he had been deceived as to the rank and resources of his proposed son-in-law,[83] he refused to go on with the marriage ceremony.[84] At this juncture Violante, who was evidently determined to have her own way, with the assistance of Abate Paolo secretly [85] arranged the marriage. When Pietro heard of it he was very angry,[87] but was forced to acquiesce.[88] He went even further and agreed to turn over all his property to the management of the Franceschini brothers [90] on the condition that he and his wife should go to live with their son-in-law at Arezzo.[93] The whole household was accordingly transferred to Arezzo, probably in December, 1693.[94]

Domestic peace was quickly broken in the Arezzo palace. Violante and Donna Beatrice Franceschini seem to have been at sword's

points.[96] The Comparini were likewise disillusioned by the pinching and penurious poverty which they were forced to share. Open quarrels soon broke out, and complaint was made to the Bishop of Arezzo.[139] There seems, in fact, to have been a bitter and scandalous turmoil during the four winter months. At last the Comparini decided to return to Rome,[99] [100] though the child-wife must of course remain behind with her husband.

No sooner had they reached Rome [101] than they formed a scheme to recover not merely their own property, but the dowry of Francesca Pompilia. Violante, taking advantage of Jubilee [102] and pricked by a conscience [101] of a very elastic nature, confessed her fraud as regards the child's birth.[103] This was easily established by six witnesses.[261] Pietro accordingly brought suit for the cancellation of the dowry contract [260] on the grounds that Pompilia was not his child, as he had supposed when he made the contract. To the infamy of such a trial the Comparini added still further by publishing and distributing broadcast certain libels about the Franceschini.[109] Even though the latter did win the suit,[263] they were stamped with the indelible disgrace of Pompilia's birth. At this juncture, Guido, by way of retort against the Comparini, had Pompilia write the letter to Abate Paolo, which loads her parents with such an impossible burden of crime.[112]

Accordingly the wretched child-wife was left to the heartless fury of the husband of three times her own years, and of Donna Beatrice. Little, however, comes to light concerning her suffering during these years—only what is told in her affidavit.[18]

At the end of three years Guido seems to have begun more active plotting to rid himself of this wife whose infamy burned him to the very bone. But he would drive her into overt sin, if possible, that he might not forfeit his claims to her dowry.[121] [122] It is quite impossible to explain the facts of the Book, especially the love-letters,[232] except by such a scheme on the part of Guido; nor is the scheme so unnatural nor was it as demonic, judged by the morals and manners of Guido's class and time, as it seems in the opinion of the Poet. His plan seems to have been so to press cruelty and fear of death upon her that she would run away. And the sham correspondence carried on by Maria Margherita Contenti [54] [154] seems to indicate that Guido had even singled out Caponsacchi as of a disposition to be allured by such a perilous liaison. At any rate, he soon seems to have made show of a bitter jealousy of Caponsacchi.[128] The plot is easily explainable if we but think of the bitter slanders of the Comparini, of the manifest infamy of Pompilia's birth, and of the sordid, selfish nature of the Franceschini.

In these straits the wretched girl must have been in all but helpless terror, especially after such a scene as that following the evening at the

comedy, when Guido pointed a pistol at her and threatened her life.[132] She had long before tried, and in vain, to find help in the Bishop [139] and in the Governor of Arezzo.[136] We can see how naturally they would have sided with the Franceschini in these circumstances.

Pompilia accordingly appealed to her confessor Romano,[144] entreating him to write to her parents for help; but no reply came to the letters (which were probably not written). Then she evidently turned to Canon Conti [145] and to Signor Guillichini,[146] both of them relatives of the Franceschini. Conti, who knew of Caponsacchi's proposed trip to Rome [153] and who knew his friend's character,[85] suggested that Pompilia seek his assistance. She did so, and though Caponsacchi first refused to have anything to do with such a perilous undertaking [160] he was at last induced to accompany her.[179] We have no definite testimony in the Book as to his former character,[32] but there seem to be no grounds for rejecting his claim that he accompanied Pompilia out of Christian pity [179] and without the slightest intervention of criminal intent.

Circumstantial evidence, gathered from the details of the Book here and there, also indicates that Guido was aware of this plan and was gladly waiting its outcome.[121] [150] He plainly had nothing to fear from further disgrace, and he would thus rid himself of a loathed wife whom he had already found he could not divorce. We can hardly explain the intervention and later testimony of Maria Contenti in any other way.[54] [154]

Accordingly Canon Caponsacchi and Pompilia concerted their plan on the last Sunday evening of April in a conversation at the window of the Palace.[184] The wife left her husband's bed late at night,[186] [187] gathered together a few clothes, some trinkets and money,[199] [200] and made her escape at dawn,[188] April 29, 1697.[184] When she had reached the tavern outside the Porta San Clemente,[191] she found Canon Caponsacchi awaiting her with a two-horse carriage.[192] Guido claimed that they had the further assistance of Signor Guillichini,[146] who would have gone with Pompilia to Rome if it had not been for sickness. They entered the carriage and set off rapidly for Rome, traveling uninterruptedly,[203] according to their own statement,[194] until they reached Castelnuovo the following evening.[211] [212]

Guido having awakened late the next morning because of the effects of an opiate [197] administered by his wife, as he claimed, set out in pursuit, probably expecting to find his wife surrounded by such evidences of criminal liaison as would free him of her. But, owing to the rapidity and directness of their flight, he did not overtake them until they were forced by Pompilia's fatigue to halt.[213] When Guido reached Castelnuovo he found Caponsacchi in the inn-yard ordering out horses for the continuance of the journey.[219] The priest was armed with a

sword [221] and made a bold front, saying, " I am a gallant man and I have done what I have done to free your wife from the peril of death." [220]

Guido accordingly, instead of taking the immediate vengeance by force of arms which the unwritten law would probably have granted him,[222] called in the authorities and had the wife and the Canon arrested. When Pompilia was brought face to face with her husband in the upstairs room of this inn [216] she attacked him with a sword,[227] which was snatched from her by a bystander. She then reproached him bitterly for his cruelties.[228] But the couple were soon carried to the local prison,[254] and were evidently there two days later according to Pompilia's letter in the last Summary of the Book. But within a few days they were carried on to Rome and placed in the New Prisons.[255]

A criminal trial for flight of the wife from home and for adultery [269] was now begun in the Court of the Governor.[270] As a part of it we have the interesting affidavits of Pompilia and Caponsacchi,[18 34] speaking in their own defense. This trial must have continued throughout the summer of 1697, as the sentence of three years' banishment to Civita Vecchia [271] was not given against Caponsacchi until September. Pompilia in the meantime had been remanded from the prison to the Convent of the Scalette,[276] but as it soon became evident that she was pregnant [283] she was removed to the home of the Comparini on October 12, under security of 300 scudi to keep the said home as a prison.[284]

The plan of Franceschini had accordingly miscarried—his wife had left him, but he had not secured either divorce or dowry, nor had he placed her in such an evidently criminal light as would enable him to do so later. Still further, Pietro Comparini seems to have reawakened the suit for the recovery of dowry and to have instituted a suit for divorce in Pompilia's name on the ground of cruelty.[266] When Guido had gone back home to Arezzo,[256] Abate Paolo had to sustain the whole burden of the lawsuits. He tried appeal to the Pope in vain.[280 281] At last, stinging with the disgrace of his family,[305] he left Rome [304] and disappeared from the story.

The Comparini, in the meantime, were again cherishing Signora Pompilia as their child in their home, and here she gave birth to a son on December 18,[299] the legitimate heir of Guido Franceschini.[300] The child was named Gaetano [20] and was then hidden away,[309] probably to keep him from falling into Guido's hands.

Guido in his Arezzo home received news of the birth. It was his clue for action.[307] He secured the assistance of four young laborers [311 312] and armed them, and they proceeded to Rome, arriving on Christmas.[317] For a week they lay in wait at the deserted villa of Abate Paolo at Ponte Milvio.[318] Then, on the evening of January 2,[319] they proceeded to the Comparini home. Guido knocked and secured admission by

saying he had a letter from Caponsacchi.[321] Violante, who opened the door, was straightway slain,[323] and the other two were cut down by the assassins,[324–6] who then made their escape.[330] As they had forgotten to secure a passport,[337] they proceeded on foot toward Baccano [339] and were overtaken [340] by the police after a pursuit of nearly twenty miles.

When the neighborhood, aroused by the outcry of the Comparini,[331] had rushed in, they found Pietro and Violante dead, but Pompilia, though frightfully mangled,[326] was still alive.[348] In fact she lived four days longer [350] and during this time made a profound impression upon the priests, physicians, and others who attended her death-bed, as is evident from their attestations.[353] She died January 6.[350]

In the meantime, according to common custom, the bodies of the Comparini had been exposed to public view in the Church of San Lorenzo in Lucina [57] and large crowds of the idly curious had pressed in to see. The crime must have been the sensation of its day.

Then began the murder trial in the criminal courts,[365] and it is this trial which occasioned the " old yellow book." It seems to have proceeded very rapidly, as contrasted with modern criminal procedure, as sentence was given February 18.[365] And although a brief delay was secured on ground of Guido's clerical privilege,[42] the sentence was finally executed, February 22, 1698.[432]

Such is the story of the Book, a sordid, cruel story, with many a glint of the human heart's worst hell, but it is likewise illumined with the heavenly light of those indisputable attestations of the bystanders at Pompilia's death-bed.

XV. Browning's Way of Using the Story:

This story, as will be seen in the topical notes, is gathered from all parts of the Book, and many of its incidents and motives are subject to dispute. By his plan, however, the Poet is able to take advantage of many of these variant versions in displaying the various characters of the speakers. Thus there is charge and denial in the Book of the fact that Caponsacchi had clandestinely visited Pompilia [170] in her home before the flight in April, 1697. The Poet's plan permits him to state the charge in the words of Guido and to deny it by those of Caponsacchi, and to turn the fact from side to side on the lips of the other speakers. There is no such question of fact in Pompilia's drawing the sword upon her husband at Castelnuovo.[227] But around this undoubted fact are gathered the many interpretations of it which throw such strong light upon its spiritual meaning. These vary from the cynical sneer of a Tertium Quid to Pompilia's declaration that it was in obedience to the word of God, who was leading her; and they are crowned by the grave, earnest approval of the Pope.[227] This play of

interpretation as to the motive of the obvious fact is one of the most striking features of *The Ring and the Book* as a work of art. An experienced newspaper man once called attention to the truth of this to life. In his labors as a reporter of news he had almost continually to face a difficulty in that each mind gives its own interpretation to the plainest ascertainable matter of fact and that the discovery of the truth from human testimony is thus rendered very precarious. The Poet has reproduced life in his Poem by this device, and it seems more like the oceanic, ever-varying surface of life than a mere picture or panorama of a certain phase of it.

In the presentation of his story the Poet is likewise true to the descriptive details given in the Book. Many incidents, of course, are presented by the Book without detail, and then it is necessary for the Poet to revitalize the incident by creating a vivid setting for it. We have, for example, very little account of the runaway journey of Pompilia and Caponsacchi from Arezzo to Rome, and he supplies this, especially in Caponsacchi's narrative, without in any way traversing the truth of his material. But Browning was quick to see and to incorporate even the slightest descriptive details of the Book into his Poem. We see this in the reference to the upstairs room at Castelnuovo,[216] to the terrace and the back door of the Franceschini palace,[158] to the knife with which the murder was committed,[414] to the Franceschini coat of arms,[47] and to Guido's secondary nobility.[38] This, however, is more extensively manifest in the Poet's careful adaptation of countless details of information connected with the case at one point or another. Wherever he found a trifling fact he gladly adopted it, frequently raising its significance very considerably in the story. It may be well to give here a considerable list of these petty details as a convincing illustration of his minute dealings with the Book. Such are the facts of Pietro's seeking of Papal alms,[73] Guido's falsification of his income,[82] Pietro's refusal to proceed with the marriage,[84] his begging of traveling expenses from his son-in-law,[99] Violante's pretended prick of conscience,[101] the six witnesses to Pompilia's birth,[261] Guido's pencil-tracing of the letter to Abate Paolo,[114] instances of the parsimony of the Franceschini home,[117-9] Pompilia's attempt to quiet her husband's jealousy,[126-7 129] her first recourse to Conti [145] and Guillichini,[146] Caponsacchi's chance passing of the Franceschini palace,[152] the Bishop's proposed departure from Arezzo,[176] the delay of two days in the plans for flight,[181] the signal with the handkerchief,[183] the manner of leaving Arezzo,[187-93] Caponsacchi's laic garb,[217] "the wicked-looking sword at side," [221] Abate Paolo's consent to the removal of Pompilia from the Convent,[288] the hiding away of her child,[309] and her final prayer to the Virgin,[349] the exposure of the corpses in San Lorenzo,[57] the death of Canon Conti,[36]

and the swooning of Baldeschi under torture.[390] Such details might be continued still further. Browning's mind was evidently filled with them and they slipped easily into their right places in his general scheme. He supplements these ascertained facts, but seldom contravenes them. This is the method of the careful and honest historian and is rarely found in the great artist to the extent we see it here. The Poet carries this principle of his art so far as to borrow in close paraphrase, we may almost say translation, the descriptive details as to the murder [317-36] and those concerning the scene of execution,[433-47] as given in Book XII.

We find a significant example of his use of the petty detail of the Book in the characteristic sneer of Tertium Quid at the death of Police Captain Patrizi,[346] who pursued and captured Guido. In the Pamphlet, p. 212, we read: "This arrest indeed cost the life of Patrizi, because having been overheated and wounded with a slight scratch, he died in a few days." Browning's version of this in his poem is as follows:

> The only one i' the world that suffered aught
> By the whole night's toil and trouble, flight and chase,
> Was just the officer who took them, Head
> O' the Public Force,—Patrizj, zealous soul,
> Who, having but duty to sustain weak flesh,
> Got heated, caught a fever and so died:
> A warning to the over-vigilant,
> —Virtue in a chafe should change her linen quick.

And the words of Tertium Quid just beyond this, lines 1416-24, are likewise adapted from the same Pamphlet.[343]

One more instance [275] may be profitably given in Bottini's figure of the wine bush (RB., IX, 1545-1550):

> I traverse Rome, feel thirsty, need a draught,
> Look for a wine-shop, find it by the bough
> Projecting as to say "Here wine is sold!"
> So much I know,—"sold:" but what sort of wine?
> * * * * *
> That much must I discover by myself.

Compare with this the words of the second anonymous pamphlet, B. 180:

> The title of that case was placed there just as a wine bush hangs outside the door of an inn, which very well shows that they sell wine there, but does not prove whether what they sell is good and salable and agreeable. Oh! by no means, etc.

It is such repeated use of even the trivial detail of his Book in the Poem that justifies the extended detailed study in the topical notes attached to this volume.

In spite of all this fidelity to fact, the poet does not find himself in a Saul's armor of literality. Like Shakespeare, like every great artist, he had the power to illuminate the mere matter of fact with profound significance and profound spiritual truth. Thus, behind the fact that Caponsacchi delayed two days after the first promise to carry Pompilia to Rome, the Poet sees indeed the excuse of the difficulty of getting a carriage,[181] but he sees all the more clearly the profound change of heart of the man Caponsacchi from the fop to the saint. Pompilia's affidavit in the Book tells of her recourse to the Augustinian confessor Romano, and of its failure,[144] but this incident glows with deeper truth in the various versions of Other Half Rome, Pompilia, and the Pope. As a final example of the alchemizing art of the Poet over his material, I add the Book account of the incident of the comedy [131] as found in Pompilia's words, which is to be placed side by side with the Poet's version on the lips of Caponsacchi:

> His suspicion increased all the more because while we were in a great crowd at the play one evening, Canon Conti, * * * threw me some confetti. My husband, who was near me, took offense at it, not against Conti, but against Caponsacchi who was sitting by the side of the said Conti.

From this grew Caponsacchi's version (RB., VI, 393):

> Well, after three or four years of this life,
> In prosecution of my calling, I
> Found myself at the theatre one night
> With a brother Canon, in a mood and mind
> Proper enough for the place, amused or no:
> When I saw enter, stand, and seat herself
> A lady, young, tall, beautiful, strange and sad.
> * * * I was still one stare,
> When—"Nay, I'll make her give you back your gaze"—
> Said Canon Conti; and at the word he tossed
> A paper-twist of comfits to her lap,
> And dodged and in a trice was at my back
> Nodding from over my shoulder. Then she turned,
> Looked our way, smiled the beautiful sad strange smile.
> "Is not she fair? * * *
> "The fellow lurking there i' the black o' the box
> "Is Guido."

This account of the fact in the Poem was transferred to Caponsacchi's lips because it was, in the Poet's conception, the very turning-point in Caponsacchi's life, which stung him awake to all the latent good within him, while Pompilia was more fitly aroused by the dawning sense of motherhood. The play of interpretative power in the above example is but one of many possible illustrations of Browning's right of eminent domain over the field he had seized, and it is in such interpretation that his creative art rises in independence of the Book without disputing it.

XVI. The Environing Life Around the Central Tragedy:

Browning realized that the central life of the subject before him lay in the relationships of his three major characters, Guido, Pompilia, and Caponsacchi; but he also realized that around them was the environing life of Rome of the year 1698—an environment that controlled and forwarded the tragedy at every point. The Poet had frequently scrutinized past ages for such an atmosphere with close human interest, and he had embodied, as we have said above, many a result in his typical human figures of *Bells and Pomegranates.* He had, moreover, the strong and vital example of this feature in artistic plotting in the historical novel of the day. *Henry Esmond* and *Romola,* then but fresh from master pens, were convincing examples of the power of such a created world around the main human interest. It therefore became inevitable that Browning, instead of contracting his view to the intense play of his few personalities upon each other, as he did in his dramas and as is strikingly exemplified by *In a Balcony,* should have gone on to the portrayal of Roman life of a century and a half before. With his intimate knowledge of the history and customs of many preceding generations, he could do this with a fidelity and an accuracy which were at no point the result of such labor as Thackeray or George Eliot spent in getting themselves back into the former day. We should say, still further, that the Poet seems consciously to abandon studious historic accuracy in this respect and exercises the artist's right of eminent power.

In writing concerning this environment he does not present the life of the Rome of the late seventeenth century from its own standpoint of morals and religion. Worldliness in the church and the marriage of convenience, nay and even the marital harshness of Guido, would have been accepted as a matter of course in that day. The Pope's liberal theology and his criticism of the church are as anachronistic as Shakespeare's Roman bells. We doubt if Guido would have been seriously blamed by his own day, and it is not at all improbable that he would have escaped punishment if it had not been for the aggravating circumstances of the murder. But in his judgment of the case the Poet abandons at will the historic standard for what he considered to be the absolute standards in morals and religion. He became thus less true historically, but more true absolutely.

Browning's picture of the domestic and social environment of Pompilia has of course but fragmentary suggestion in the Book. But he could easily imagine the comfortable selfishness of the Comparini, which by force of contrast brought out all the more strongly Pompilia's early flower-like purity and her later saintly patience and fortitude. For the home life of the Franceschini palace, he went rather to his knowledge of the human heart, presenting all the petty meanness of a nobility

which has run to bitter dregs in its poverty. He took certain details from the affidavit of the servant,[110] but he made comparatively scant use of this affidavit. Around these two selfish families we feel the presence of a Roman life, productive of countless more of the same types, and they form a heartless, hope-destroying barrier against the escape of Browning's Pompilia, driving her still more utterly to the patience and the faith of God's own saint.

XVII. The Church as an Environing Power:

A far more important feature, however, of that environing world, and almost the whole of it, was the great Roman Church of the day. It had received both Guido and Caponsacchi as sons; it had been present at every moment of Pompilia's career, as the outward guide of her deep, religious emotion; it had adjudged her flight from home and her husband's murderous vengeance. All of these cases, criminal and civil alike, had been in the ecclesiastical courts, as Rome lay entirely under the secular authority of the Pope. It was not a time of supreme worldly pride in the Roman Pontiffs, nor of worldly corruption. Pope Innocent XII had overthrown nepotism, and was himself a man of piety and charity. Yet the same great institution of the medieval centuries and the renaissance still rose as splendidly as its Saint Peter's, a fitting symbol of its strength, pride, and glory. Browning, however, was always more interested in men than in institutions, and was sure to illustrate institutions by men, rather than subserve men to institutions. Throughout the whole range of his work, he had probed with curious interest the many types of churchmanship: The Spanish monk, the Papal Legate in *A Soul's Tragedy,* Monsignor in *Pippa Passes,* and Bishop Blougram. But into *The Ring and the Book* he has gathered as much as in all other places put together. The churchman is as present in the Poem as he is on the streets of the Eternal City, not shrouded behind his uniform, but revealed in his life and purposes. Priestly types appear at every turning of the story and illustrate every throb of passion which animates the great whole. Abate Paolo, Caponsacchi, and Girolamo are priests, and Guido is attached to the service of a cardinal. In the speech of Caponsacchi we are shown his worldly-wise patron, his great-uncle, the Bishop of former days, Brother Clout and Father Slouch, Canon Conti, the Confessor Romano, the good Celestino, the ecclesiastical judges with their smirk at the " peccadillos incident to youth." Then there is the harder, self-seeking clergy of Guido's monologue, where clerical preferment becomes a gambler's chance, and where complaisance to the cardinal is an eighth virtue; his closing speech is addressed to Cardinal Acciajuoli and Abate Panciatichi, and is a bitter ripping up of secrets of the selfish society of which he

has been a part. The Pope himself turns grave as he considers the degenerate conduct of many of the sons of Mother Church. Browning has presented such a church, not in the spirit of satire or criticism, but with the intention of representing truly the hard environment which shut in Pompilia to the brutalities of her husband. The Poet was always afraid of the dominance of institutional religion at the expense of personal religion. He realized, not in religion alone, but in art and in all other inspirations, how easy it is for the soul to become satisfied with a form from which the spirit has fled. He feared a church that stood between a man and his God, and that formulated and fixed his belief. And here in *The Ring and the Book,* Browning presents such a church, with the same confidence in his fidelity to truth as he shows in his monk in the Spanish cloister and Johannes Agricola. From this church might come a Guido and a worldly Bishop of Arezzo, but from it also came Caponsacchi and Fra Celestino, and over it presided the grand old Pope.

The Pope is not merely the crown of the institutional church of his day, gathering within himself all that is best in it, but he is also the mouthpiece of Browning's own comment on the tragedy and of his own faith in spite of its horror. In the Book there occurs only the mere mention of him, in the manuscript letters.[62] There is no proof that he took any personal interest in the story, nor even that he did anything else than deny Guido the protection of clerical privilege. The sentence against the murderers was by the court, and not by the Pope. The Pope merely took the negative attitude of non-interference. There is, of course, not the slightest hint of his character in the Book. Browning has gleaned from the Papal histories of the day the fact that he was a good old man, something of a reformer, self-denying in his private life, and lavish of alms. He has added to this not the characteristics of another Pope, Innocent XI, as is sometimes charged, but those of a typical wise old age, which has crowned a life of devotion to the good and true.

Browning had a very distinct faith as regards old age. It is not a time of decrepitude but of vision, a time of clear survey of life from a moment of peace at its close. In the Pope, Rabbi Ben Ezra, and John of *A Death in the Desert,* Browning has created three old men of this type, men who realize what old age should be; and all of them were created within a period of five years. We might add to their number the old priest in *Ivan Ivanovitch.* It is noteworthy that Browning makes all of these old men, to a certain extent, his own mouthpieces. They express the philosophy of life and the vision of God and His love, which is found everywhere throughout Browning, and is fundamental to his own personal religious philosophy. Every important doctrine of *Rabbi Ben Ezra* can be paralleled from the other poems of Browning.

The Pope likewise becomes the exponent of Browning's doctrine and of his personal attitude toward the actors in the poems. Here we have Browning's judgment of Pompilia and of Caponsacchi, of the Franceschini and the Comparini. It is Browning who grows sad at heart in blaming his whole world. We may add that Browning has even placed in the mouth of the Pope that apology for Euripides which is so directly a part of his own reverence for the great Greek tragedian, whom he glorified still further in the words of Balaustion. But whether the judgment is personal or dramatic, it undoubtedly greets us as a sane, strong, divine judgment to dispel the chaos of the previous clashing of opinion, and it is a triumph of art.

XVIII. The Law as an Environing Element:

The Church was one of the conditioning elements of the environment of the tragedy, but the law was almost equally important. And of the law Browning had ample opportunity to judge in the pages before him. He uses this material with strong, satiric scorn. He was evidently moved to indignation by the shrewd sophistries of the arguments in the case. Ideally the law stands for justice between man and man, but here it had become a cunning machine devised for defeating real equity and justice. His contempt and irony are poured full upon the " patent, truth-extracting process." His indignation was stirred against a class of men who had been in close contact with the tragedy without feeling the slightest sympathy for the sufferers. There is no ray of such feeling at any point in these arguments of the Book, though there is much rhetoric and indignation of a purely professional character. There are also flashes of the contemptuous deference to the legal opponent, which is one of the worst types of professional vanity. Yet, on the whole, the personal characters of all the lawyers of the Book are practically imperceptible behind the professional mask. Browning doubtless felt that they were far more distant from the truth of the case they were dealing with than were the gossips of the Roman streets, who were under mere chance prepossession. In presenting these two lawyers of the Poem, Browning attempts to reproduce by means of characteristic types this great fact of the law, which in the Book governs every phase of the Poet's material.

Browning's humor has admirably interpenetrated his conception of the first lawyer, as he reproduces him in the Poem, and has saved Arcangeli from utter remoteness from our human interest. Of course the whole idea of the birthday feast and of the paternal pride in the little boy is Browning's sheer invention, and redeems in part the vanity of Arcangeli. Browning has also amplified the pompous deference to the Pope. For practically all the rest of the monologue he has followed

the Book with minute fidelity to its letter rather than to its spirit; nor does he follow any one argument, but chooses indiscriminately from all parts of the Book. Every point of law found in the monologue is in the Book: such as the elaborate plea of *causa honoris,*[399] and its efficacy in law, the rights of one offended in honor to kill after a lapse of time as well as immediately,[405] the injury done to Guido's honor by the parents,[401] and all the aggravating circumstances of the murder.[408–20] Moreover, each matter of evidence in the monologue had been given the same bent in the Book. Every precedent cited—those of Dolabella, Leonardus,[395] Farinacci,[386] Saint Ambrose,[394] Matthæus,[396] Panimolle,[397] Theodoric,[384] Jerome,[476] Gregory,[477] Saint Bernard,[480] Cyriacus,[492] Castrensis,[398] Apostle Paul,[383] and the strange one of Christ, who is made to say *honorem meum nemini dabo,*[393] are in the Book. The Latin so abundantly used by the lawyer is a very close adaptation of definite passages of the Book.[461–513] A total of 56 passages, including 814 Latin words, are taken with close accuracy from the Book, while only 31 words in 7 quotations [514] are taken from classic sources, mere scraps of the classics.

It can be seen by what has been said above that the detailed dependence of this monologue on the Book is very extensive, and in no part of the poem has Browning stayed closer to his source. This is probably one of the reasons of the comparative neglect of the monologue by readers. Yet I venture to assert that the reader who can and will read the Latin and its paraphrase as they come in the text, so that he may enjoy all the delightful innuendo of this paraphrase, will find abundant source of entertainment in the speech. It contains far less for the lover of beauty, or of splendid imagination, but in all the range of Browning's shrewd analyses of odd, twisted, or bad characters, such as Sludge and Prince Hohenstiel, none is really comparable with that of Arcangeli. The monologue is purely a mosaic, in which some very large and important pieces are reproduced with absolute accuracy; but there is genuine art in their arrangement for the purpose of reproducing the effect of these lawyers upon Browning's own mind, and they were close-joined by the durable cement of the Poet's irony and his laughter. Browning has also taken fully the opportunity offered him by the manuscript letter of Arcangeli which was bound into the Book. The Poet paraphrases this closely, though with a delicious touch of his own, in the letter of Book XII, 239-89;[450] the latter half, of course, is purely the invention of Browning, with full sympathy for the rotund rascality of the writer.

In the monologue of Bottini, however, Browning is further away from both the letter and the spirit of the real Bottini. The Poet seems to have taken a distinctly hostile attitude toward this prosecutor of Guido, which mars the fairness of his judgment. Irony and scorn

saturate the introduction to the monologue in Book I. This anger of the Poet probably arose from Bottini's treatment of Pompilia. In the course of his arguments against Guido, the real Bottini makes many damaging admissions about her, which are not at all necessary on the face of the evidence, and seems to have been utterly without regard for her personal character. He makes admissions as regards the love-letters, which were surely false,[247-52] as regards her showing herself at the window at a hiss of her lover,[173] as regards the use of the opiate,[196] and even offers the very ingenious theory to explain Venerino's testimony as to the kissing during the flight.[209] In the Poem, however, such damaging admissions are extended over and beyond this, and touch the case at many other points—the clandestine meetings with Caponsacchi at Arezzo,[170 174] Pompilia's solicitations of the Canon and others criminally,[128] Caponsacchi's kissing the unconscious Pompilia,[213] the receiving of clandestine visits from Caponsacchi after the return to Rome,[293] and the lie in the very hour of death to save her paramour [360] and to destroy her husband.[361] Such admissions are in fact a caricature [197] of Bottini as he was found in the Book, and the Poet evidently paints the portrait under the impulse of his prejudice against the arrogant professional pride and utter moral and religious obtuseness of Bottini. Perhaps it is only fair to add that it was not Bottini's professional business to defend Pompilia, but rather to attack Guido, and he bases his attack not upon the innocence of the victim, but upon the brutal and illegal manner of putting the vengeance into execution. And the court before which he was arguing was doubtless far more ready to follow such a line of argument, and to base judgment upon it, than to feel any sympathy such as Fra Celestino felt for the dying child-wife.

Along with the arrogant professional pride of the Bottini of the Poem, we have a scholarly pride which Browning has caused to influence very subtly the style and illustration of the monologue. The English is smoother and more harmonious, rising at times to real beauty. It is interlarded with classical quotations, there being 21 [520] such, as contrasted with 5 [515-9] taken from the barbarous Latin of the Book. The Fisc also makes allusions and draws illustrations 33 times from Latin and Greek mythology, history, and literature. This is strictly a dramatic feature; for as Stopford Brooke has well pointed out, Browning is remarkable for the scarcity of such allusions, when compared with other poets.

Over the law, as over the gospel, the good Pope presides to save us from cynical skepticism for this human institution and to bring to a close the selfishness and harshness of the long conflict. And it is he who, according to Browning, saves Pompilia and Caponsacchi from the results of the conventional perversity and wrong-heartedness of this whole environing world of the Italy of 1698.

XIX. The Characters as found in Book and Poem:

The chief interest, however, for the ordinary reader will lie in Browning's method of dealing with the characters of the actors, the human types found in the Book and the Poem; for Browning is essentially a poet of human nature, and it is his men and women who fix the attention of the reader.*

I have already stated that thirty-three names are taken from the Poet's source-material—quite a number of these, of course, are mere names. The minor characters, wherever they are given real lines of characterization, are in general faithfully reproduced from the Book, except for somewhat of a favoring of Pompilia's friends at the expense of Guido's. Abate Paolo is the same cunning diplomat and manager;[50] Violante the same headstrong, disagreeable woman;[65] the tone of Fra Celestino's speech is certainly like that of his real affidavits.

The creation of the three major characters, however, presents a far more interesting and important problem; for in their relation with one another we find the true heart of the tragedy, and here it is that the independent creative mastery of the artist soars free from the trammel of fact to display the Poet's vision of truth. One of the chief interests in the Book, accordingly, is in its manifestation of the real prototypes of these three important personages in the Poem. For as ideal representations of the good and bad in human nature, they contain the best Browning has to utter upon the problem of life. The story was unimportant, so far as wordly consequences are concerned, and the characters have to supply its real import. No nation was awaiting the result of this tragedy, no public consequences of dominating importance were dependent thereupon. But the good in the suffering saint, Pompilia, and the soldier saint, Caponsacchi, in their active strife with the demonic in Franceschini, is a sufficient source of interest. God's hand is shown at enmity with the wrong of an evil man backed by an unideal conventional morality. And so, though the story is not of epic consequence, it is of profound importance to the spirit of man. In dealing with the play of these three most important characters, the Poet has increased very considerably the comparative importance of the Caponsacchi of the Book. We turn now to a somewhat more extended study of them. We may remark by way of caution that practically every statement in the Book as regards any of the three is biased—some of these statements are utterly false—and the student must not merely cite the words given, but like the judge must also weigh the evidence offered as to their characters.

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* Rossetti Papers, p. 401, July 4, 1869: Browning talked about an article in *Temple Bar*, saying that he, as shown in *The Ring and the Book*, is an analyst, and not a creator, of character. This, Browning very truly says, is not applicable; because he has had to create, out of the mass of almost equally balanced evidence, the characters of the book as he conceives them, and it is only after that process that the analyzing method can come into play.

Ritratto de Infelice Guido franceschini. il quale fu
Decapitato in Roma alli . . febraro 1698.

XX. Count Guido Franceschini:

We turn first to the consideration of Count Guido Franceschini. He is the most elaborately and skilfully drawn of all Browning's bad men, and they are many. In his earlier works the Poet shows something of the natural historian's interest in evil men—they are described and faithfully reproduced without comment or moralizing. *The Laboratory, The Confessional,* Ottima and Sebald, *A Soul's Tragedy, Instans Tyrannus,* and *Porphyria's Lover,* all present the criminal in this way. The Poet also dwells at times with curious analysis—we may almost say sophistry—upon the obliquely and erratically bad, as in *Sludge, the Medium.* Later on, however, the bad man took a definite place in the Poet's doctrine, both theological and philosophical. His earlier keen intellectual enjoyment in mere objective presentation, or subsequently in the analysis of the motive of a bad heart, gave way to a sense of its demonic power in antagonism against God and goodness. What is the meaning and result of such antagonism? Can the creature in sin defy its God? Or still more, if he do so, can the Creator for sin destroy His creature, made in His own image? Browning realized the significance of these questions. In their answer lay his very possibility of faith. Guido causes the Poet to search his own heart as thoughtfully as does the old Pope in the Poem. The bad man is himself an epitome of much of the deeper thought of any artist. His decadence, his mastery over the world, and the final nemesis which overtakes him draw largely from the poet's deepest insight into life.

Of all Browning's bad men, none can match Guido in sheer monstrous wickedness. His birth and education have associated him with the conventionally best of his day, while at heart he is of the worst. He is the degenerate son of an effete nobility, as bankrupt in humanity and sense of honor as in purse. He has inherited the position of gentleman, but bears none of the marks of noble birth. His very honor in birth and family is a mere marketable commodity. The strong, proud stock has run to its dregs. He is mean in personal appearance.[45] Brutality has banished courage, and self-interest has destroyed self-respect.[46] Poverty has served to accentuate all the latent evil of the race, and has stimulated the inordinate, wolfish rapacity which darkens Guido's conduct. His training has been in the worldly church,[42] and he is a stone in her inordinate pride. (RB., VI, 313-316.) Yet no true religious motive actuates him. He clings to her in the hope of gain—of immunity in his plunderings—but turns upon her with cynical scorn when defeated in this hope. In his eyes there " is no such thing as faith extant." It is all lies, cunningly contrived for selfish gain. The privilege he claimed as noble and churchman alike is the privilege of sinning for gain's sake. This Guido was the natural result of the conventional society in which he moved. He observed its conventional morality and religion because

of the gain they bring or the lash they carry, and until the time of the catastrophe would be regarded as little worse than his neighbors.

His catastrophe began far back in his angry resentment at being poor. The privilege of his noble birth was checked by poverty. He would have plundered if he had been strong enough, but turned rather to a career of gain in the church. Defeated again and again in his ambition, he at last found himself, at the age of forty-six,[44] out of the " service of a certain Cardinal without a soldo." [41] Then he wedded a child-wife for gain,[76] and in the excess of his greed defeated his own cunning plans;[108] for his cruelties to the Comparini brought their denial of Pompilia's rights as child.[103] In his resentment he wreaked brutal vengeance on the child-victim in his power. Yet there was more than defeated greed, as Browning sees it, in Guido's attitude toward his wife; there was a fierce hatred of her goodness as goodness. " Hate was the very truth of him." Her presence was a constant rebuke to the sin within him. Browning has suggested a situation somewhat similar to this in his *Instans Tyrannus;* for Pompilia's patient endurance aroused his resentment:

> I advise—no one think to bear that look
> Of steady wrong, endured as steadily,
> * * * * *
> How does it differ in aught, save degree,
> From the terrible patience of God?

This devilish resentment against goodness intertwines with the brutality and greed of Guido's heart. No ray of kindliness relieves his dark nature, no mother love nor brother love, no piety nor reverence.

> For I find this black mark impinge the man,
> That he believes in just the vile of life.

Now such utter depravity of heart, loathsome as it is, is made interesting by the presence of no mean intellectuality, chiefly a matter of preternatural cunning. Whatever our loathing of the man, we can not but be impressed with the mental vigor of his speeches, an impression somewhat different from that gained through the speeches of others concerning him. This it is that lends the necessary element of terrible power to what would otherwise be merely despicable. This intellectuality he shares with such villains as Iago, and Satan of *Paradise Lost.*

Yet the Poet feels that God leans in mercy over the life of Guido, bad as it is. He grants

> Probation to the oppressor, could he know
> The mercy of a minute's fiery purge!
> The furnace-coals alike of public scorn,
> Private remorse, heaped glowing on his head,
> What if, * * *
> The lost be saved even yet, so as by fire?

The very forgetfulness of Guido in the matter of passport, as the Pope interpreted it,[337] was the providential Hand arresting Guido on the verge of eternal destruction; for he would have gone unprepared to the death his fellow assassins were plotting against him.[338] But God gave him a moment's respite to confront his crime, to realize and hate himself. And it is the Pope's earnest wish that in the very suddenness of his fate

> may the truth be flashed out by one blow,
> And Guido see, one instant, and be saved.

That is, Guido with the fierce terrors of death staring him in the face may recognize his own evil, may see the supreme value of love, may recognize the love of God, and even the loving saintliness of his wife, and this, in Browning's idea, meant salvation. Such is the significance of the final cry for forgiveness:

> Abate,—Cardinal,—Christ,—Maria,—God,—
> Pompilia, will you let them murder me?

Browning, the lover of Pompilia, perhaps shared Caponsacchi's grim wish, lines 1901-54, as to the fate which should overtake Guido, but Browning, the seer and lover of man, would claim even a Guido for God. For in *Apparent Failure,* he says:

> My own hope is, a sun will pierce
> The thickest cloud earth ever stretched;
> * * * * *
> That what began best, can't end worst,
> Nor what God blessed once, prove accurst.

Pompilia's words as regards him are blessing and not curse:

> We shall not meet in this world nor the next,
> But where will God be absent? In His face
> Is light, but in His shadow healing too:
> Let Guido touch the shadow and be healed!

Now the Guido of the Book is a far more commonplace villain than Browning has conceived him. His mean personal appearance [45] is taken directly from the Pamphlet. Unfortunately Guido's own testimony is omitted from the Book, except in a few fragments cited by his lawyers (pp. cxxvii-viii), and so we can not judge of his character from his own mouth. Yet there is much proof of the real character of the man in almost every argument of the Book, though at no point is there any clear final characterization of him. Brutality, craft, greed, are alike present; and the reply to the Anonymous Writer lays continual stress upon greed as a dominant passion.[46]

Concerning Guido's earlier career the Book gives us no further information than that he spent thirty years at Rome in the service of a Cardinal; this has quickened Browning's imagination to add the narrative on the lips of Guido, which is so full of the self-seeking ecclesiastical life of the year 1698.[39] Under the stimulus of the crafty wits of his

brother Paolo,[50] he played for the hand of a wealthy child-wife,[76] a common practice in the society he frequented. His duping of the self-seeking Comparini [82] would have been considered a case of Armenian meeting Portuguese. Not till he began his abuse of Pompilia did he disclose the rough brutality of his nature. Of these cruelties [111 122 132–4] there is abundant evidence in the Book. In them he was encouraged by his mother's example,[49] if we may believe the affidavit of the maid Angelica.[100] Yet he was evidently able to hold his own in Arezzo by reason of the rank of his family; and he had the countenance of both the Governor [135] and the Bishop.[139] This is easily explained if we but remember that in Italian society the husband's right over the wife is almost undisputed, and that there were only the complaints of a strange child-wife from Rome against the word of a family of recognized rank. Guido's deadly hatred was the normal effect of the disclosure of Pompilia's disgraceful birth and this was accentuated by the threatened loss of the dowry.[46] Probably his friends sympathized in this hatred. How then should he get rid of her? Divorce was impossible save on the grounds of adultery; so adultery, either real or feigned, must be proved against his wife. He doubtless felt that he could by giving opportunity entice her into an intrigue. Even such a riddance of her could add little to the chagrin and disgrace he already suffered. His cruelties were partly brutality, partly craft—meant to drive her to flight. The interposition of the maid Maria Margerita [54 154] was almost undoubtedly at Guido's instigation. The letters she bore back and forth must have been the husband's forgeries, through which he hoped to drive Pompilia and Caponsacchi together.[169] There is no other reasonable explanation of the facts of the Book. The trickery of Guido is further proved by the pretended love-letters,[232] for the husband asserts that these were a genuine correspondence from a flirtation in Arezzo. No one can read them now and believe them to be of Pompilia's composition. This is made the more probable when we see that he practically forged the letter to Abate Paolo.[112] The very fact that this packet of love-letters was all ready for the precipitate departure of Guido in pursuit of the fugitives indicates that he was deep in his plots before the flight. The false charge concerning the sleeping potion [196] confirms still further the belief in his plot. The only point at which his cunning seemed to have failed was in that Pompilia and Caponsacchi kept themselves pure in their perilous flight.

We see, therefore, that brutal selfishness softening itself by an intricate cunning was the character of the real Guido. Intrigue and falsehood were his favorite weapons; when they were finally broken, the brutal element in his nature drove him on to a cruel murder. Even then, his cunning, his recognized rights as a husband, and the prestige of his family in Arezzo would have set him free in the Tuscan courts.[294]

But his plea that he was a wronged husband failed of proof in Rome, and, perhaps to the surprise of many, he paid the penalty of his crime.

Browning seems to have realized fairly and fully this real Guido Franceschini. He also realized that in his own day Guido had many defenders and that his cunning had done much to baffle those who would judge him. He accordingly reproduced this very effect in the Poem, until not a few persons when they have finished his first monologue are inclined to believe his plea. He baffles and wins the book-spectator as he baffled and won those actually around him. This is a marvelous achievement in character delineation.

Yet in the end the villainy of Guido becomes unmistakable long before he shrieks for the forgiveness of Pompilia. And Browning has made him his fullest and most significant example of evil in man. To do this he of course has had to go on beyond the limitations of the Book-character. He must raise Guido above the commonplace before he is fitted for poetic treatment. The dangerous and self-possessed cunning, the intellectual vigor, the cynical lack of faith in good and aversion thereto have been added by the Poet. To use Shelley's dictum in his Introduction to the Cenci, he has increased the *ideal* depravity of the character. Yet in thus darkening the motive passion and personal attitude of Guido, he has not added a single item to Guido's chicanery and crime. We know from the Book that Guido was bad and see the frightful crimes that gather to his charge, and yet we do not see Guido in the Book until the artist intervenes. Fra Lippo Lippi's words are apropos of this power of the artist:

> We're made so that we love
> First when we see them painted, things we've passed
> Perhaps a hundred times nor care to see;
> And so they are better, painted—better to us,
> * * * * *
> * * * Art was given for that;
> God uses us to help each other so,
> Lending our minds out. Have you noticed, now,
> Your cullion's hanging face? A bit of chalk,
> And trust me but you should, though!

We see, therefore, that it is not the fact of Guido's career as the poet drew it from the Book, but the interpretation of the meaning, power, and destiny of evil as Browning found them for himself, which makes Guido the most significant villain in English poetry since the days of Shakespeare; and while the fact of Guido's execution was a matter of history, the inevitable nemesis of ruin which grew out of Guido's long career of subtle selfishness found its origin in the insight of the poet. The very fact that he is not the villain at war with society, but is the semi-respectable ultimate of certain conventional phases of selfishness, makes him all the more important in showing what Browning regarded as real moral evil.

Behind Guido, " midmost blot of black," are discernible the rest of that dire family as a fitting environment—" the fox-faced, horrible priest," Paolo; " hybrid " Girolamo, " part violence, part craft "; and

> The gaunt grey nightmare in the furthest smoke,
> The hag that gave these three abortions birth,
> The unmotherly mother and unwomanly woman.

All these are in the Book, and we find the accusation of craft and trickery against the first,[50] of lust and brutality against the second,[51-2] and of miserly cruelty against the mother.[49] Yet the lurid, hellish tints, the deepest shadows, are of Browning's imagining and they are partial explanation to him of Guido's own character. They have fostered and forwarded all that is worst in him. To them all the Pope gives his scathing word of denunciation, as well as to the hard world of Arezzo behind them—the Governor, the Bishop, the Confessor, and the cutthroat assassins.

XXI. Francesca Pompilia Franceschini:

Over against this Guido, with whom selfish worldliness has united her, lies the dying child-wife, Pompilia. The four years of cruel antagonism between her good and his evil have closed in the triumph of that public death-bed. Fra Celestino's testimony bears ample evidence to the saintly spirit of her closing days.[555] The strife had not been one of mere brute power, but of spirit. The evil in Guido had loathed the good in his wife and had sought not merely to maltreat her, but to destroy her soul.[121] This passion became almost as strong as his greed.[46] The good in her, on the other hand, shrank in terror from his presence. She was to conquer by that hardest of all conquests, through suffering. When Guido had done his worst to her, he had but destroyed her body which he had ruined. Her spirit rose triumphant at the close of her short life. " Everywhere," says the old Pope,

> I see in the world the intellect of man,
> That sword, the energy his subtle spear,
> The knowledge which defends him like a shield—
> Everywhere; but they make not up, I think,
> The marvel of a soul like thine, earth's flower,
> She holds up to the softened gaze of God!
> It was not given Pompilia to know much,
> Speak much, to write a book, to move mankind,
> * * * * *
> Yet if in purity and patience, if
> In faith held fast respite the plucking fiend,
> * * * * *
> If there be any virtue, any praise,—
> Then will this woman-child have proved * * *
> Just the one prize vouchsafed unworthy me.

Adi 5.

† Maria Bartol.a di San Germano in età d'anni 43. figl.a dell.q ... -
dall hon.le Loco moglie di N.colò Dudò Borgo.ne morì d'un accidente nella casa
data abitare alla Strada d'Selmonia e fu sep.ta in q.st.a Chiesa

Adi 7.

Il Sig.r Giacinto di Paolo di Sapino Rione S.to Ferrentino in età d'anni 64. figl.o dell
S.r Carlo dall hon.le Loco marito della Sig.ra Girolama Vaccambria Rom.a
morì nella Com.a della S.ta M.a nella Casa dove abitava alla Strada d'Condotti
venne tutti li S.ti Sac.ti e fu sep.to alla Chiesa nova

Adi 5.

La Sig.ra Fran.ca Longhina Conegarini Rom.a in età d'anni diciotto emolle figl.a dell S
Sig.r Pietro Conegarini Rom.o Moglie dell Sig.r Guido Franceschini d'Arezzo di Toscan
morì nella Com.a della S.ta M.a nella Casa dove abitava alla Strada pubblica
venne tutti li S.ti Sac.ti e fu sep.ta in q.st.a Chiesa

Browning's art often lingered over the creation of women, and Colombe and Balaustion are proud marks of this loyalty to them. He had also sketched the woman-victim in *My Last Duchess,* and elaborated her figure in *The Flight of the Duchess.* But both of these were high-born ladies, of sweet, sunshiny natures, far removed in social rank and disposition from Pompilia; and in neither of them is a stronger womanhood developed through affliction. Mildred also is a victim, though stained with sin; but she is too weak to save herself or her lover, and we feel pity, not reverence, for her. In Pompilia, Browning has gathered what seemed to him some of the highest womanly qualities, spiritual insight rather than mere intellectuality, fortitude in suffering rather than energy in antagonism, faith in God, love of her child, and an ignoring rather than an ignorance of sin. She had neither genius nor executive energy, nor even simple joyousness. Yet Browning felt that the spiritual element latent within her had that power of true benefaction which is the mark of saintliness. These are the accepted characteristics of the Virgin Mary, and as such she seems to have appeared to Caponsacchi. More than once he speaks of her as the Madonna and, as the Poet portrays her, she has much in common with the mother of Christ, as a type of womanhood. We may also note that this may have suggested to the Poet her thought of the immaculate conception of her babe,[22] when she shudders to think of Guido as its father. But there is another influence in the creation of this ideal character beside that of the Madonna, it was the Madonna of his home, the mother of his own child, whose spiritual nature was as noteworthy as her intellect. And before this spiritual nature the Poet bowed in humble reverence. One of his friends (Scribner's Monthly, December, 1870) tells of his saying: " That he did not feel worthy to unloose her shoelatchets, much less call her his own." Mrs. Orr (Life, p. 409) says still further:

> Mrs. Browning's spiritual presence was more than a presiding memory in the heart. I am convinced that it entered largely into the conception of Pompilia.

It takes, however, both the throbbing humanity of Balaustion and the saintly glory of Pompilia to express fully the nature of Elizabeth Barrett Browning as she appeared to her husband.

Browning's artistic skill is well exemplified in the way he communicates to his readers a feeling for Pompilia's beauty of face.

> A lovelier face is not in Rome.

That she was in fact beautiful is strongly suggested by the word of the Book, though little definite notion of this beauty is there given. But

Browning evidently became a worshiper of this sad, strange, beautiful face which haunted his imagination;

> The same great, grave, griefful air
> As stands i' the dusk, on altar that I know,
> Left alone with one moonbeam in her cell,
> Our Lady of all the Sorrows.

She is the " lily-thing to frighten at a bruise." The Poet over and over again thrills his reader with his own reverent sense of this beauty, not by describing his heroine, but by emphasizing the effect of a spiritual radiance which seems to emanate from her face. It was this face which converted the whole life of Caponsacchi, and it was this face which Guido loathed with a deadly hatred and which he cut to pieces. That Browning had marked skill in describing mere beauty of face is seen in his little poem, *A Face,* suggested to him by his girl friend Emily Augusta Patmore. Yet in his mature poetry he seldom describes his favorite heroines. The personality in the face rather than the beauty of feature is his endowment for Pippa, Colombe, Constance, the Duchess, Balaustion, and the dream-wife of *By the Fireside.* And Pompilia's spirit-beauty illumines the darkness of the whole somber plot.

This child-wife of Guido is indeed strong in her faith, even beyond the natural probabilities of her years and surroundings. Yet Browning has declared, " She is just as I found her in the Book." * This assertion seems to be based on the strong impression made upon the Poet by the sworn evidence of Fra Celestino and the others who ministered to her while dying, and the reader of this introduction should here insert the translation of it (pp. 69-73). Elsewhere in the Book such a character for the real Pompilia is hard to find. She was undoubtedly of vile parentage.[105] In the legal arguments her character and motives are dragged through the mire by the sophistries and jargonings of the lawyers, and just such incriminating explanations and acknowledgments are made as anger the reader of the monologue of Bottini. Even Guido's accusers speak of her merely as " the unfortunate child " and the " wretched girl." Some of the witnesses show pity for her suffering, but not even the sworn testimony of Caponsacchi [34] displays any recognition of her character as it finally evidenced itself in the hour of her death. Her own affidavit [18] shows simplicity and innocent suffering, but gives no hint of her more striking aspects of character; it has no word concerning her faith in God, her thought of her child, nor of any personal feeling toward Caponsacchi. Almost the sole fact-basis for Browning's conception of her character lies in the sworn testimony of

* " I asked him if it did not make him very happy to have created such a woman as Pompilia; and he said, 'I assure you I found her in the book just as she speaks and acts in my poem.' There was that in his tone that made it evident Caponsacchi had a rival lover, without blame." Rev. John W. Chadwick in The Christian Register, Jan. 19, 1888.

Fra Celestino and his associates,[353] who were her spiritual guides in death. No one can read these without an absolute conviction of her saintly purity and patience. Those men of long experience who surrounded her death-bed were deeply moved by her innocence, her tender forgiveness of those who wronged her, and her faith in God. Yet elsewhere in the Book even this testimony is distorted and ridiculed by Guido's lawyers.[353]

To this highest Pompilia of the Book Browning has added greatly—in fact he has added the important features of her characterization without transgressing the definite limits of fact. In the Book there is not a hint of Pompilia's sense of motherhood,[21] which according to the Poet was the real motive of Pompilia's flight from Arezzo and was the quickener of her new trust in God, that came with the impulse to save her babe. In her monologue this sense of motherhood is one of the tenderest human traits of Pompilia as her motherly faith and motherly solicitude dwell on the thought of the little Gaetano.[20] The evidence we have as to the beautiful motherliness of Mrs. Browning makes us look to her as the source of this new trait in Pompilia's character. The Poet's belief in the privilege and beauty of motherhood as seen in Pompilia should be studied in the light of the Priest's words thereon in *Ivan Ivanovitch*. No more sensitive and spiritual conception of motherhood in its deeper experiences can be found in English poetry.

Another very important addition to the Pompilia of the Book is her love for Caponsacchi. In the Book she merely turns to him as a rescuer from her desperate plight. Here, as often elsewhere, Browning defies the merely conventional rightness of appearances. The fact of her flight from home in company with a young priest seemed compromising enough to the lawyers in the case. The prosecution against Guido even acknowledged that Pompilia may have made love to Caponsacchi for the sake of extricating herself from deadly peril at the hands of her husband. Yet, in spite of the accusations and inferences of the lawyers, aside from certain forged testimony, there is no evidence in the Book of any love between Pompilia and Caponsacchi.[150] Browning might have taken advantage of this fact and have represented them as victim and rescuer with no other bond between them than this which had risen by chance. It would have made an easier case to defend in the eye of the world. Browning, however, was far more apt to seek out difficulties of this kind than to avoid them. He knew of the presence in this world of a love that is lust, and such love was repeatedly charged against Pompilia by Guido's defenders. Why, then, did he not deny love in them? Nowhere does he show himself more daringly creative than in acknowledging on the lips of both Pompilia and Caponsacchi the presence of love. He could do this because he recognized a higher spiritual love, independent of the feeding passion of the body—

a love which is worship of the good and heavenly and ideal as embodied in man or woman, a love which is a real yearning up to God. And herein, he has humanized the saintliness of his two ideal personages.

Such " love is best "; such love is the " prize of life "; " the true end " for which we live is in " this love way with some other soul to mingle." With this conception of the purifying and ennobling nature of love, Browning need have no fear of any damaging effect of such an admission. It would rather be natural in his opinion that two noble souls, even in such a dark hour, should recognize each other instinctively and yearn toward each other. The conventional world around them would have sneered at their love as being only a thin veil of lust; but Browning felt in it a crowning glory to his soldier-saint Caponsacchi and his suffering saint Pompilia. Such a love looked far beyond the ordinances of man in conventional marriage.

> With gold so much,—birth, power, repute so much,
> Or beauty, youth so much, in lack of these!

When Caponsacchi came in answer to her prayer for help, and when she saw in him " God's hand visibly at strife " with evil, her woman's love went out to him as the purest and best of men. He had saved not merely her body but her soul, which in its respite from suffering had seen God and had risen to a higher law.

> Through such souls alone
> God stooping shows sufficient of His light
> For us i' the dark to rise by. And I rise.

This presentation of a purely spiritual affection would have been impossible to an Elizabethan and would have been conceived only by a very high-minded and pure worshiper of woman.

In the hour of her death, Pompilia dwells not upon the suffering and the evil of the past, but upon the three great spiritual blessings of her closing life: " Her faith in God, held fast despite the plucking fiend," the love for her friend and helper, and her mother love. On these three rests her peace in death; and of these three only the first is brought out in the Book.

The consideration of Browning's Pompilia in the light of the Book would be incomplete unless mention were made still further of Browning's fidelity to truth in giving the apparently incriminating details as he found them in the documents before him. The Poet was too confident of her character to court concealment. Her single flash of action in the sword flourish against Guido at Castelnuovo is frankly vindicated by the Pope, lines 1072-85.[227] No more damaging piece of evidence was found against her than what Guido's lawyers triumphantly brand " the lie about the arrival at Castelnuovo." Pompilia asserted that she and Caponsacchi had reached the inn of Castelnuovo at dawn,[212]

only an hour before her husband overtook them; while Caponsacchi agrees with all other witnesses in saying that they had arrived in the evening and had spent the night there. To remove the dangerous implication of this apparent falsehood the lawyers against Guido claimed that she had merely lied for policy's sake, and that no vice had been concealed behind the lie. Browning's explanation rests in the fact that she had swooned in the evening light and had remained unconscious with fatigue through the long hours which had followed.[212] [213] The driver's accusation that the fugitive couple had kissed during the journey is likewise stated and met. Browning was willing thus to state even the most damaging evidence of the Book.

We must say, in conclusion, that Browning has been far too modest in his claim that he has presented Pompilia as he found her. Her story is indeed retold much as it had been in the Book; her sufferings are the same, her patience even unto death is the same. But even the hard, cruel facts are softened by passing through her soul. As she says:

> **Being right now, I am happy and color things.**
> **Yes, everybody that leaves life sees all**
> **Softened and bettered.**

Her own sinful mother's life,[105] Violante's trickery,[65] and the prospect of her babe left alone, are seen gently. The real glory of Pompilia's character has been created by the Poet in expanding the partial truth of fact as he found it into one of the most masterly portraits of the suffering saint in all literature.

With her parents Browning has by no means taken the liberties he uses with the Franceschini. Their conduct throughout the case, as presented in the Poem, is true even in the minutest details of fact. They are thoroughly bourgeois.[63] Pietro's self-indulgence [71] and his frequenting of taverns [97] are facts of the Book, and the Violante of fact has all of the disagreeable traits presented by Browning.[65] The anonymous pamphleteer speaks of her pride and calls her a " very shrewd woman, and of great loquacity "; easily moved by the thought of a grand alliance for her daughter, and determined to have her own way, even by means of a secret marriage,[85] and full of cajolery afterward.[88] The Governor of Arezzo also says that " she presumed to domineer over the house, and to keep the keys of everything." [96] Rome's gossip might mouth her reputation and do it little harm. Pompilia seems as utterly unrelated to them in character as in body; her home environment as a whole was a foil rather than a cause of her goodness. And we may say parenthetically here that Browning is so thoroughly a believer in the independent power of human will to triumph over heredity and environment that the later nineteenth century literature on this subject hardly affects him at all. Such a late study as *Halbert and Hob* is strikingly unlike Browning's usual attitude in this respect.

XXII. Canon Giuseppe Maria Caponsacchi:

In the portrait of Caponsacchi, the third person of this central group, Browning has been still more daringly and splendidly inventive beyond the fact of his material. The real Caponsacchi's relation to Pompilia had been confined almost solely to the crisis of her trouble. Browning saw, however, in the mere hints of courage given in the Book the possibility of an ideal heroism to be placed over against the ideal villainy of Guido. Caponsacchi was twenty-four years old at the time,[26] a nobleman, and a subdeacon in the church of the Pieve of Arezzo.[27] Pompilia tells us that her husband became jealous of the young man because he had stopped beneath her windows to talk with certain young hussies of the city.[32] This seems the sole basis for the frivolous flirtation of Caponsacchi, as Browning has conceived it. Guido took further umbrage because Caponsacchi was in the habit of passing their house,[128] and he flew into a murderous rage after the incident of the comedy told by Caponsacchi in his monologue.[132] It seems not at all improbable that his jealousy was feigned as part of the elaborately cunning scheme of Guido to drive his wife into a criminal intrigue with the young Priest.[121 150] The reader may interpret the husband's choice of Caponsacchi for a part in such a scheme as indicating that the priest was originally a proper candidate for the intrigue. When the torture became too hard to bear, Pompilia turned at last to Caponsacchi [149]—after seeking aid elsewhere in vain [145]—because she had heard that " he was a resolute man." Canon Conti, according to the Italian pamphlet, had suggested him to her [35] and says of his friend that " his spirit had stood every test." [28] There are other hints of Caponsacchi's courage. The very act of flight with Pompilia might well make a brave man shrink as he did, when he said at first that he was unwilling to have anything to do with such an affair.[160 179] " Yet at last the impulse of charity and pity prevailed upon him to free this innocent woman from death." [180] And when Guido overtook the fugitives at Castelnuovo, and " found Caponsacchi urging that the horses be harnessed for continuing the journey," [219] the latter faced him with the words: [220] " I am a gallant man, and what I have done I have done to save your wife from death." It is only fair to say that Guido's lawyers recognized this courage of the man as mere criminal daring and call him dare-devil [29] (*scapezzacollo*). Arcangeli also speaks of him as the " terrible priest," and Spreti denominates him as " a young man, brave and forceful, provided with arms and accustomed to sin, and, what is more, both prompt and ready to resist." There can be little doubt that he was a man of force and spirit. His own affidavit [34] has a manly ring, though not rising to any heroic pitch.

Browning might have accepted such a Caponsacchi as he was and have given him a merely incidental and external relationship to the

tragedy.[180] His art was deeper and wiser than this. He created instead a soldier-saint, a true Christian hero, as a foil to Franceschini. Caponsacchi has become the most elaborate and the most interesting of Browning's pictures of noble manhood. He differs decidedly from the earlier types of Browning's heroes, such as Paracelsus and Luria. They were men devoted to a great idea, and their heroism lay in their integrity and passionate devotion thereto. Caponsacchi's devotion, however, is to no such idea, but to a woman of flesh and blood. Years before, in Valence and Berthold, the Poet had vied with himself to create a man worthy of his Colombe. Still other types of hero appear in Pheidippides and Herve Riel. None of these, however, are at all comparable with Caponsacchi. I like to think that, as the Pope represents the graver, wiser, and more judicial attitude of Browning's mind toward the tragedy, so Caponsacchi represents the passionate, impulsive side of his nature—his indignant partisanship therein, just what Browning would have felt at twenty-five—what he did feel in *The Glove* and *The Flight of the Duchess*.

Without any assistance from the Book, Browning has imagined what lay in the years previous to this splendid outburst of manhood. The hero was born into the same social and religious environment as Guido, and early turned to a worldly career in the church. A worldly churchmanship can hardly retain him as its own when the innate sincerity of his unspoiled nature faces corrupt ecclesiastical practice. But once the vow passed, he seems to be slipping acquiescingly into a place in the ranks of a pleasure-loving, courtly clergy. He is a graceful and adept conformist to the customs around him. He practices poetry in a Marinesque Adoniad, finds diversion in Lightskirts[33] at the theater, is enviably popular with the fine ladies of the city, and can digest without a grimace the archbishop's jokes. The finer nature, which had shrunk awe-struck at the strictness of the vow of the renunciation of the world, was vanishing in the "fribble, fop, and coxcomb." Then suddenly he was brought face to face with the

> lady, young, tall, beautiful, strange and sad.
> * * * * *
>
> That night and next day did the gaze endure,
> Burnt to my brain, as sunbeam thro' shut eyes,
> And not once changed the beautiful sad strange smile.

Caponsacchi "bowed, was blessed by the revelation of Pompilia"—from that hour he was a changed man.

Browning's purpose evidently was to make Caponsacchi no mere impersonal helper in the flight of the wife from her husband; but in that event to bring him also to the crisis in his life, to the moment of the making of the Christian hero out of the conventional fop. Browning liked to conceive of his characters in their earnest crises, as at such times

the whole latent character would declare itself. His words in *Cristina* on this subject are too well known to need quotation. The young priest " was named and known by that moment's feat, there took his station and degree." The conventional world around him became irksome, a better taste and a truer religion found birth with his love. He says:

> my life
> Had shaken under me,—broke short indeed
> And showed the gap 'twixt what is, what should be,—
> And into what abysm the soul may slip.

At the second meeting with that " great, grave, griefful face," his call to duty came, a hard duty, demanding the rise of the true man within him. Browning ignores the word of the Book here, which says that he at first refused to have anything to do with such a questionable and dangerous undertaking.[179] Caponsacchi in the Poem instantly accepts this new duty of self-sacrifice, because he has been changed to a nobler self by the look of the lady. The spirit of self-sacrificial love, which is the essence of Christianity, became the living motive of Caponsacchi, and we feel that Browning would assert that in the crisis he has risen to real Christian heroism.[179]

Now all of this element is added by the creative instinct of Browning. We have little evidence in the Book that the flight with Pompilia had been more than a superficial adventure to the real Caponsacchi. His rise to the noble attitude of his later manhood is as much the creation of the Poet as is the early worldly masquerade before his meeting with Pompilia.

It seems not improbable that the legend and character of St. George of Merry England may have had much to do with the Poet's ideal of his soldier-saint, just as the Madonna had governed the ideal of Pompilia. Browning had doubtless seen Vasari's fine *St. George Slaying the Dragon,* which stands as the altarpiece in Caponsacchi's church. It is no mere chance that the Poet changed the date of Pompilia's rescue [184] from April 29 to April 23, St. George's day. (RB., VI, 1111.) And the rescue of the maiden who lay at the mercy of the hideous cruelty of the dragon bears a striking analogy to the story which the Poet had found in this old volume. He has also compared this rescue with the story of Theseus and Ariadne—the St. George legend of ancient Greece. The Poet, moreover, has made reference to Caponsacchi as a St. George five times in *The Ring and the Book.*[28]

Browning has not merely added the conversion of the worldly Caponsacchi to the higher possibilities of his spiritual nature, but he has also added the deeply passionate yet profoundly reverential love of Caponsacchi for Pompilia. The addition of this love-element to the character of Pompilia has been mentioned, but something must be added here. In both of them love was the occasion of a spiritual revolution. In Pompilia's eyes he had been God's saving arm, a strong man full of pity

to her who had been accustomed to the selfishness or harshness of men. To him she had been a revelation of God dwelling in woman as purity, long-suffering, and godliness: an embodied Madonna, Our Lady of Sorrows. She challenged his worship in the most profound religious sense, rather than in the conventional, sentimental hyperbole of romantic poetry. He dwells on no pretty graces nor mannerisms, but accepts his miracle of the revelation of the Divine motherhood, self-authorized. She is the

> snow-white soul that angels fear to take
> Untenderly * * *
>
> The glory of life, the beauty of the world,
> The splendor of heaven.

Wordsworth has well described such a love:

> Love that adores, but on the knees of prayer,
> By heaven inspired; that frees from chains the soul,
> Lifted, in union with the purest, best,
> Of earth-born passions, on the wings of praise
> Bearing a tribute to the Almighty's Throne.

Browning might have given such an other-wordly feeling to this bond of love as to have greatly reduced our interest. Such is the devotion of the confessor, Fra Celestino.[353] This would have been the easier and more prudential way of dealing with two attractive young persons in so dangerous a situation. He prefers, however, to make each heart stir with an earnest personal passion for the other. In Pompilia it is a serene feeling, which rests purely by the side of her mother love and her faith in God. In Caponsacchi it is an overmastering flood of devotion to her service and of indignation against those who have wronged her. In each case it is the earthly crown of a true manhood and womanhood, coupled with a sincere devotion to God. In Caponsacchi it all but spoils his case, giving some ground for the accusation that " he loved the lady as they called love." Browning, however, has at no point in his poetry shown more splendidly the utter independence of real passionate love from " love as the world calls love," of Ottima and Sebald.

The Caponsacchi as thus conceived is worthy of his important place at the heart of Browning's masterpiece and is as great a creation as any in the whole range of Browning's poetic world.

XXIII. Browning's Independence in Character Creation:

In the consideration of these three figures we find the masterly creative freedom of Browning as he rises above his material. The Book gives but confusedly and imperfectly these characters. Guido rests under harsh charges in the Book, but extenuating pleas are made in his behalf. The facts of Pompilia's life are discernible in the Book, but her character is but mistily and confusedly presented. Caponsacchi's

fortitude is plain, but it is charged with being the fortitude of daredeviltry. One of Browning's chief problems, as a student of truth, was to bring order out of this chaos of charge and countercharge. But as an artist he had the far more important problem of raising the three to the province of art, vitalizing and idealizing these characters till, laying aside their commonplaceness, they would stand for the Poet's master conceptions of human nature, his attitude toward conventional society, his faith in God. Certainly in this part of the Poem the restraining leash of fidelity to truth is no hindrance to his poetic flight, and herein we get the unique, personal element of power which every great artist must contribute to the materials he works upon before they become vitally his own in art.

XXIV. The Final Significance of this Source-study:

All that has been said above throws light on the whole problem of the creative artist's relationship to his material. Nor will it do for one to accept or reject certain guiding principles on mere *a priori* grounds. We have here a great artist and a great resultant Poem. The latter fully justifies him against any critic's cavil as to how he might have written a better poem with the same material.

The Poet seems to have been guided all through his creative activity by a determination to be true to his material—" So absolutely good is Truth," he says in *Fifine at the Fair.* He accordingly mastered the facts of the Book even to its trivial details. These he reproduces in his Poem profusely, fitting them unlaboriously into the text and the current of his verse. He had so filled himself with these facts that they became his facts; and these names, dates, descriptive details, petty sophistries, citations of authorities, reproduce themselves as vital parts of the resurrected story. The fragments marshaled themselves out of chaos into one pervading, unifying cosmos. Instead of the crowded, sordid, confusing presentation of a criminal trial, he made it a comprehensive book of life. Yet rarely has a poet of high rank shown such respect for the integrity of his material. Still further, he has planned his Poem not by conventional genre, but has invented a form which is a vital outgrowth of the material before him, an independent and organic plan.

To all this Browning has brought the wealth of a richly endowed personality. The deeper spiritual meaning of the three major characters and of their play upon one another is purely a part of the Poet's vision. They are hopelessly obscured to ordinary sight in the Book. One phase after another of the Poet's deeper life breathes forth in these monologues so that, in the end, we have in the Poem not merely the story retold from the Book, but the wise, sane thought of Browning's full maturity; and it is this, and not the rough ore of fact, that has made the Poem what it is.

Altogether, one can hardly come from a close study of Book and Ring, side by side, without an ever-deepening sense of the might of Browning as a creative artist. The dead weight of the old Book could not bear him down. His fidelity to it could not clip his wings. Its chaotic night of evil could not daunt his moral instincts. Its sheer confusion falls readily into order. Not since Goethe have we had the play of such a giant mind upon a subject which had fascinated it; and it remains, as was said above, the macrocosm of the art and the life of Robert Browning.

One word in conclusion as to this whole matter of poetic originality in its bearing on our subject. Browning is not the less a master that he had such a source-book. The good old law of the literary spoil to the strongest has unfortunately tended to disappear of late in the canons of criticism, and no one can doubt that this has wrought no small injury in our literature. The shibboleth of originality has driven many an artist to practice sheer invention rather than resuscitation in story-telling. Browning's use of the Book, however, brings us back again to the importance of such a background of truth for all good work. The true artist finds ample opportunity for expressing what is great in himself as an artist by using such materials as come to hand. He will be their master and not their servant; they are mere tools of his craft; but the materialless storyteller who depends on sheer fancy is little better prepared for his artistic future than the carpenter who is unprovided with tools and must depend on hands and sticks and stones. Shakespeare was doubtless the greater Shakespeare for all the plays, poems, novels, and histories which are gathered in Hazlitt's *Shakespeare Library;* Dante was the greater Dante for his mastery of the whole medieval tradition of Hell, Purgatory, and Paradise; Milton was the more Miltonic for centuries of semi-artistic retellings of the story of the fall of man; Homer was the greater Homer in the richness of the patriotic balladry which had arisen around the Trojan War; and Browning rose to his masterpiece in art by seizing firmly the Book which " the Hand " had thrust into his own as a call to his greatest achievement in creative imagination.

Corpus of Topical Notes.

The following topical notes present in intelligible order the confused fact and the intricate cross-referencing of Book and Poem, and they are usually explanatory of an initial text quotation from *The Ring and the Book*. The line-numbering and text of the poem are conformed to the author's edition published by Smith, Elder & Co. Page references to the Book are indicated by B, which is followed by Roman numerals if the reference is to the original and by Arabic numerals if the reference is to the translation, the latter being more frequently employed, as the pages of translation permit the insertion of superior figures for return reference. Citation of the secondary source (pp. 207-213) is indicated by P.; of the Casanatense pamphlet (pp. 215-225) by C.; and of the general essay (pp. 227-291) by E. The annotation has been confined to the source problem under discussion, and has not dwelt on the many historical and interpretative questions which should find answer in a more general volume.—C. W. H.

CORPUS OF TOPICAL NOTES.

1—RB., I, 33, 140, 677:

"Old yellow book." The Poet's name for the Book, evidently suggested by the soiled and worm-eaten "crumpled vellum covers."

2—RB., I, 122-31:

These words are a close paraphrase of the actual manuscript title-page of the Book, page I.

Position of the entire criminal cause	*Posizione di tutta la Causa Criminale*
Of Guido Franceschini, nobleman,	*Contro Guido Franceschini Nobile Aretino,*
With certain Four the cut-throats in his pay,	*e suoi Sicarii*
Tried, all five, and found guilty and put to death	*stati fatti morire in Roma il di 22*
By heading or hanging as befitted ranks,	*Feb. 1698. Il primo con la*
At Rome on February Twenty Two,	*decollazione gl'altri quattro di*
Since our salvation Sixteen Ninety Eight:	*Forca*
Wherein it is disputed if, and when,	*Disputatur an et quando*
Husbands may kill adulterous wives, yet 'scape	*Maritus possit occidere Uxorem*
The customary forfeit.	*Adulteram absque incursu poenae ordinariae*

Cf. RB., XII, 229.

3—RB., I, 136-9:

> in a Latin cramp enough
> When the law had her eloquence to launch,
> But interfilleted with Italian streaks
> When testimony stooped to mother-tongue,—

All the formal proceedings of the lawyers and judges were in Latin, as a matter of course a barbarous, late, church Latin, made all the more difficult by the technical nature of the discussion. The testimony was naturally in the vernacular Italian.

4—RB., I, 145-6:

> Primary lawyer-pleadings for, against,
> The aforesaid Five;

There are six arguments for and five against the Accused in the Book. "Primary" is probably used in the sense of original. Cf. RB., X, 216.

5—RB., I, 146-7:

> real summed-up circumstance
> Adduced in proof of these on either side,

There are three summaries (*summario*) of evidence, one for and two against the Accused: pamphlets 4, 7, 11. Cf. RB., X, 217; XII, 230.

6—RB., I, 148-9:

> Put forth and printed, as the practice was,
> At Rome, in the Apostolic Chamber's Type,

All the pamphlets in the Book, save the two anonymous Italian narratives, were printed, probably in very few copies, by the Court for use in its procedure and bear the imprint: Romae, Typis Rev. Cam. Apost. 1698. (Reverendae Camerae Apostolicae.) Browning translates literally. This papal press was an official and not a mercantile press.

7—RB., I, 150-2:

> And so submitted to the eye o' the Court
> Presided over by His Reverence
> Rome's Governor and Criminal Judge,—

The arguments are addressed "*Illustrissime et Reverendissime Domine*" and on the file titles they are spoken of as by "*Illustrissimo et Reverendissimo Domino, Urbis Gubernatore in Criminalibus.*" The governor at this time was Monsignor Pallavicino. The Criminal Court, however, was presided over by Vice-Governor Venturini, who had also presided over the *Processus fugæ* (Notes 269, 270), and who later issued the final decree in vindication of the good name of Pompilia (Pamphlet 18). He was possibly assisted by a board of Judges (B., 193. *Illustriss. Congregationis*), but the usual custom in the criminal law of that day was to try before a single judge. Browning, without any authority in the Book, speaks of three Judges (RB., VI, 8), and likewise without authority includes Judge Tommati (RB., I, 1052; VI, 34, 133; VIII, 219, 263), who had tried the first civil suit of Pietro for the recovery of the dowry (Note 262). Cf. Note 365.

8—RB., I, 689-90:

> Doubled in two, the crease upon them yet,
> For more commodity of carriage,

Soiled streaks on many pages of the Book were evidently caused by the folding of the separate pamphlets, for the purpose of carrying them in the pocket.

9—RB., I, 691-4:

> And these are letters, veritable sheets
> That brought posthaste the news to Florence, writ
> At Rome the day Count Guido died, we find,
> To stay the craving of a client there,

These three letters (B., 190-1), written at Rome on the day of Guido's execution, are addressed to Sig. Francesco Cencini at Florence. The first of these is reproduced by the Poet, RB., XII, 239-88 (Note 450); the other two are not at all in correspondence with the other letters of Bk. XII, but facts from them are used here and there through the poem (Notes 428, 429, 431, 448-9, 451). Cf. RB., I, 257-9.

10—RB., I, 85:

"Small-quarto size." The Book is 7¾ by 10 by 1 inch, printed in small-quarto.

11—RB., I, 119:

> Print three-fifths, written supplement the rest.

There are in fact only about 10 pages of manuscript out of 260.

12—RB., I, 694-5:

To stay the craving of a client there,
Who bound the same and so produced my book.

RB., XII, 225, 231:

To this Cencini's care I owe the Book,
* * * * * * *
Discreetly in my Book he bound them all,

Browning's conjecture that Cencini collected and bound the Book is evidently based on the fact that the letters were addressed to him (Note 9); this is the reasonable supposition as to the collectorship. Note the words of the third letter (B., 191). "I inclose the Fisc's argument, except a single response, which I will send to you as soon as I can lay hands on it, that your Excellency may have the entire case." This accounts for Cencini's having most of the pamphlets of the Book.

13—RB., I, 110-1:

from written title-page
To written index,

The written title-page, see page I, is followed immediately in the Book by the *Indice*, or Table of Contents, pages III and IV. Such manuscript additions are frequently made out by the modern lawyer in completing a case for his professional library.

14—RB., VII, 6-7:

Francesca Camilla Vittoria Angela
Pompilia Comparini

Such is her name as given in the baptismal record (B., 127). The full text of this entry of Pompilia's birth in the records of San Lorenzo in Lucina under date of July 23, 1680, is as follows:

Ego Basilius Riscius Chi Curatus baptizavi infantem natam die 17 ex D. Pietro Comparini Romano quondam Francisci Florentini et ex D. Violanta Romana nata filia quondam Hiacinti Conjug. degentibus in hac Parrocia cui nomen impositum fuit Franciscae Camillae Victoriae Angelae Pompiliae. Padrini fuerunt Reverendus Dominus Johannes Baptista Barberius quondam Ludovici Romanus, deg. in Parroch. S. Franciscae et D. Barbara Cardili de Fabris deg. in hac Parrochia.

Cf. RB., II, 55; IV, 213-4.

15—RB., VII, 1-2:

I am just seventeen years and five months old,
And, if I lived one day more, three full weeks;

Browning evidently calculated this accurately counting from Pompilia's birthday, July 17, 1680 (B., 127), to her deathday, January 6, 1698. Cf. RB., II, 60; III, 457-8; and Notes 350, 351.

16—RB., III, 63:

A lovelier face is not in Rome

The testimony in the Book as to Pompilia's beauty is found (B., 148): "A woman in the flower of her age and, as I have heard, of no small reputation for beauty"; (B., 184): "especially if the wife is beautiful; and (B., 197): "although it may be very difficult for a beautiful woman to preserve the decorum of her honor." No specific information beyond the subsequent note is given. Cf. RB., VI, 1997-8.

17—RB., III, 67:

Black this and black the other!

RB., XI, 1349:

The long black hair

There is a hint of Pompilia's dark complexion in one of the forged love-letters (B., 81), "that you are darker than I." Cf. RB., II, 275-6.

18—

Pompilia's affidavit, made in Rome, Monday, May 13, 1697, twelve days after her arrest at Castelnuovo, was a part of the *Processus fugæ* (Note 269), or criminal process against herself and Caponsacchi for flight and adultery. It is found in the summaries of both sides, but in greater fulness in that of the Defense (B., 69-73). The marginal comments in the latter version (which are stressed by Mrs. Orr, Handbook, p. 88 as indications of something questionable in the real Pompilia's character) are, of course, the prejudiced comments of the lawyers for Guido and are worthless as evidence of guilt in Pompilia. Browning found in this affidavit much information of importance in the story; but it is in no sense a prototype of the monologue of Pompilia in the Poem, nor is it uttered at the same time nor under the same circumstances.

19—

The letter of Pompilia written from the prison of Castelnuovo, May 3, two days after the arrest, is said (B., 143) to have been "found among her private correspondence after her death." It is also referred to (B., 144).

20—RB., VII, 29-30:

He is a boy and Gaetan by name—
Gaetano, for a reason

P. 211: "After that Pompilia bore a son, whom she named Gaetano, after the saint to whom she made her vows." This is the only authority for the child's name, which is so often repeated in the poem. Cf. RB., I, 405; VI, 1389; VII, 100-105, 276; IX, 1371; XII, 688, 781.

21—RB., VII, 1223-59:

The wonderful account of the birth of the brooding mother-sense in Pompilia is Browning's own invention, and he returns to it repeatedly. Cf. RB., III, 1121-4; 1527-38; VI, 762-8; 1374-6; VII, 1439-40; X, 1073-81.

22—RB., VII, 1762-3:

My babe nor was, nor is, nor yet shall be
Count Guido Franceschini's child at all—

Pompilia seems to turn here to the thought of the immaculate conception by the Virgin Mother as the explanation of her own child's birth. At line 1692 she says: "I felt like Mary." Cf. also lines 91-2. The Fisc makes cynical reference to this possibility: RB., IX, 1352-66. Caponsacchi speaks of her repeatedly as Madonna. Cf. p. 281.

23—RB., VII, 58:

The month—there wants of it two weeks this day!

The child was sent away (line 46) when two days old—that is, December 20. (Cf. Note 299.) Pompilia is speaking January 6 (Note 350); hence the accuracy of her word, as in her mother yearning she counts the days that still separate her from her babe.

24—RB., VII, 10.

When they insert my death,

The death record in the parish register of San Lorenzo in Lucina (see illustration, p. 280) reads: "Signora Francesca Pompilia Comparini, in Rome, at the age of seventeen and a half, the daughter of former Signor Pietro Comparini, of Rome, wife of Signor Guido Franceschini of Arezzo in Tuscany, died in the Communion of the Holy Mother Church in the house where she lived on Strada Paolina; she received all the Sacred Sacraments and was buried in this, our Church." Cf. Note 351.

25—RB., VII, 32:

"Curate Ottoboni." Browning finds the name (B., 127). Otthobonus had not baptized her; he merely made the sworn transcript of the baptismal record used as evidence in the trial.

26—RB., VI, 290:

"Giuseppe Maria Caponsacchi." The full name of Caponsacchi is given in its Latin form (B., xcix or 83). Cf. RB., VII, 941. The Caponsacchi family were of noble rank.

Our arms * * *
The shield quartered with white and red.

Giuseppe Maria Caponsacchi, born March 26, 1673 (Griffin), was invested Canon November 26, 1693, and resigned of his own accord May 15, 1702. (Records of the Pieve of Arezzo.) The family is now all but extinct, but still preserves a vague rumor that some priestly forbear had run off with a woman.

27—RB., VI, 346-8:

I' the Pieve * * *
* * * * * * *
Sub-deacon, Canon,

Caponsacchi (B., 75) says: "I am a Canon of the Pieve of Santa Maria of Arezzo, and am merely a subdeacon." At line 975, he speaks of "the pillared front o' the Pieve,—My church." This is one of the oldest and most impressive of the churches in Arezzo—its famous "pillared front" being well known.

28—RB., VII, 1323:

Our Caponsacchi, he's your true Saint George

The fact that Conti suggested Caponsacchi as traveling companion is given (B., 174): "he suggested that there was no better person than Canon Giuseppe Caponsacchi, his friend and intimate, whose spirit had stood every test." Cf. B., 60; P., 211; and Note 145.

Vasari's fine St. George slaying the dragon is the altar-piece of the church of Conti and Caponsacchi, Santa Maria della Pieve of Arezzo. This may have suggested the St. George strain in Caponsacchi's character. Cf. E., 286-9, and RB., I, 585; VI, 1771, 7; IX, 602.

29—RB., VIII, 1193:

"Pollent in potency." Arcangeli (B., xvii) speaks of Caponsacchi as *viribus pollens*. The full statement is as follows (B., 15): "Because the lover was of powerful strength, not at all timid, and all too prompt for resisting, since in the word of one of the witnesses in the prosecution for flight he was called cutthroat." Cf. B., 110, 150.

30—RB., VII, 911:

"The rich dark-brown hides?" Browning has a hint of Caponsacchi's complexion in one of the forged love-letters (B., 81).

31—RB., VIII, 1194:

"*Amasius,*" or paramour. Guido's lawyers continually mention Caponsacchi thus.

32—

There is little in the Book to suggest Browning's presentation of the worldly, irresponsible youth of Caponsacchi. Pompilia speaks (B., 70) of his stopping in front of their house to talk with certain young hussies. The poet may have read into the word *donnicivole* some of the opprobrium of our word flirt or even chippy, but no such sinister meaning is necessarily implied.

Tommaseo, *Dizionario dei Sinonimi*, § 1413: "*Donnicivole, donna di bassa condizione, debole di spirito, con de pregiudizii Donnicivole puo intendersi della plebe, ma non dispregevole.*" Cf. RB., II, 806.

33—RB., VI, 429:

"Light-skirts." The term was possibly suggested by "*la Cantarina*" in one of the forged love-letters (B., xciii or 78).

34—

The important affidavit and cross-examination of Caponsacchi (B., 73-6) is not dated, but it was probably made about the same time as that of Pompilia (May 13, 1697), and was part of the criminal trial against himself, the *Processus fugæ*. It is manly and straightforward, and bears out Browning's interpretation of the young priest's heroic qualities, though it makes no suggestion of a personal affection for the woman-victim he had rescued. It is in no way the prototype of the monologue in the poem, and was uttered at a different time and under other circumstances.

35—

Canon Conti, so frequently mentioned in both Book and Poem as the friend of Caponsacchi, was brother of Count Aldobrandini (Griffin), who had married Guido's sister (B., 70); he was accordingly spoken of as a relative and a frequenter of the Franceschini home (B., 74, 92, 144). Conti had been invested Canon of the Pieve August 14, 1692. (Records of the Pieve.) He was in company with Caponsacchi on the evening of the comfit-throwing (Note 131) and Guido subsequently became jealous of him also (B., 70). He was fully informed of Pompilia's sufferings, and to him she turned for relief (Note 145). As he felt it improper for himself to move in the matter, he advised Pompilia to seek the aid of his friend Caponsacchi and he united his urgency to hers. He is accordingly called (B. 177) "the mediator in that flight." The fact that he was not subsequently included in the Tuscan trial of Pompilia and Guillichini for the runaway probably indicates that he had

refrained from overt act in the matter, or that he had died before the suit was instituted. He is also mentioned (B., 80) in the forged love-letters. He was probably related to the Jacopo Conti who swears (B., 42) to the ill-treatment suffered by Pompilia. Cf. B., 60, 62, 144, 159, 196; also RB., II, 938-41.

36—RB., VI, 2032:

> Conti is dead, poisoned a month ago:

(B., 177): "It is public talk and report throughout Arezzo that he died a month ago under similar suspicious circumstances." The records of the Pieve give his death as occurring January, 1698—that is, subsequent to the murder of the Comparini. The word could hardly have reached Caponsacchi by the time of his supposed speech.

37—

Guido Franceschini, "a nobleman of Arezzo" (B., 10, and P., 209), of an old but impoverished family, appears in the Book in as unfavorable a light as in the Poem. He was evidently forced early to seek his fortune at Rome. Browning, however, creates outright for us a conception of his early ambition and purpose and of his later unsuccess in the battle of life.

38—RB., V, 144-5:

> * * * not first in rank
> But second, * * *

Evidently drawn from (B., 171): "it is untrue that his family enjoyed the highest rank of nobility in the City but * * * is of only secondary rank." Palazzo Franceschini, formerly in Via dei Cenci, is no longer in existence. The family was of low origin, came "*da un sensale*," and grew to great power, no one knows how, and during the 15th century were gonfaloniers of Arezzo. The family became extinct not long after Guido's death.

39—RB., II, 288-9:

> * * * since many years,
> Was friend and follower of a cardinal;

This fact is evidently drawn from P., 209: "Guido Franceschini, a nobleman of Arezzo had stayed for some time here in Rome, in the service of a person of some eminence." The Casanatense pamphlet (P., 217) says that Guido became Secretary of the Embassy for Cardinal Nerli. François Nerli, born in Florence, July 13, 1636, was son of a banker. He took orders and was raised to the Cardinalate in 1673. For a while he was Archbishop of Florence, but as he was not able to please either the Grand Duke or the people, he retired to Assisi, where he passed the remainder of his days in an agreeable retreat. He was versed in all knowledge and always considered it an honor to be the friend of the learned. He died in Rome in 1708. (Moreri, *Grande Dictionnaire*, VII, 970.) He was possibly the one to whom Caponsacchi refers somewhat scornfully (RB., VI, 1254-65). The full detail of the service given by Guido (RB., V, 292-397) is supplied entirely by the Poet. Cf. RB., II, 154-6; III, 256-7; IV, 400-15; V, 336-9, 1795-6.

40—RB., IV, 55:

"Her Eminence." Evidently a waggish translation of *sua Eminentia* (B., cxxxiv).

41—RB., IV, 417:

> And not a penny in purse to show for it,—

This ironic comment of *Tertium Quid* is evidently based on (B., 169): "Out of service of a Cardinal, without a soldo." Cf. C., 217.

42—RB., V, 269-70:

> Close to the Church, though clean out of it, I assumed
> Three or four orders of no consequence,

The Book contains no information as to this fact, but the letters (B., ccxxxv-ix) tell of the staying of Guido's sentence for a few days on the ground of his clerical privilege (chiericato). He was secretary of Cardinal Nerli (C., 217). Cf. RB., I, 255; X, 445-8; XI, 45-6, 52.

43—RB., II, 304:

"Thirty years." Browning seems to borrow this time from the *trent' anni nella medesima Citta* (B., 122), which is said of Abate Paolo, and not of Guido. Browning uses it in connection with the latter at RB., IV, 392. Cf. RB., V, 292; X, 825.

44—RB., V, 1428:

"Fifty years." According to P., 213, Guido was fifty at the time of his execution, and he was therefore forty-six at the time the marriage took place. The baptismal records of Arezzo, however, show that he was born January 24, 1657. It runs as follows: Gennaio 24, 1657. Guido di Tommaso di Girolamo Franceschini e di Beatrice di Guido Romano. Cf. RB., I, 784; IV, 409, 719; XI, 1844.

45—RB., I, 783-4:

> Lean, pallid, low of stature yet robust,
> Fifty years old,

RB., IV, 718-9:

> Little, long-nosed, bush-bearded, lantern-jawed,
> Forty-six years old,

RB., VII, 396:

> Hook-nosed and yellow in a bush of beard,

All of these descriptions of Guido's personal appearance are drawn from the statement at P., 213: "Franceschini was low of stature, thin and pallid, with a prominent nose, black hair and a heavy beard, and was fifty years of age." Browning also had in his possession the rough pen sketch of Guido found at page 275. This was probably made only a few days before Guido's execution. It was sent to the Poet by a stranger, who found it in a bundle of drawings, etc., which he bought at a sale in England. The Poet has probably stepped beyond dramatic propriety in the above words of Pompilia, which are repeated at RB., VII, 443. This is but one of many manifestations of Browning's grudge against the meanness of Guido, which will hardly let the Poet be fair to him. Cf. also RB., XII, 192-6.

46—RB., X, 543-5:

> All is the lust for money: to get gold,—
> Why, lie, rob, if it must be, murder! Make
> Body and soul wring gold out,

This assertion of the inherent greed of Guido is made all through the reply to the Anonymous Writer (pamphlet 15), where almost every motive of Guido is traced ultimately to this. B., 168, *dannato interesse;* 169, *stimolato dell' interesse;* 171, *la sua avidità;* 171, *d'ingannar per farsi ricco;* 173, *dall' interesse deluso;* 175, *oggetto dell' interesse;* 177, *la scandalosa e detestabile cupidigia & avidità.* Bottini in his final argument also repeats this charge frequently: B., 139, *dotis cui praecipue maritus inhiabat;* 142, *eodem urgente pro lucro dotis;* 151, *pro lucro dotis;* 152, *ut dotem lucraretur;* 155, *pro lucro dotis.* Cf. RB., III, 702-10.

47—RB., XI, 2161-6:

> Those are my arms: we turned the furze a tree
> To show more, and the greyhound tied thereto,
> Straining to start, means swift and greedy both;
> He stands upon a triple mount of gold—

RB., XII, 822-4:

> Shield, Azure, on a Triple Mountain, Or,
> A Palm-tree, Proper, whereunto is tied
> A Greyhound Rampant, striving in the slips?

These descriptions of the Franceschini arms are taken from a small water-color drawing, made by the Poet's friend, Barone Kirkup, and now pasted on the front inside cover of the Book. Notice that Browning reads into this coat of arms the greed which he felt was characteristic of the family. Cf. RB., XI, 1932-4.

48—RB., II, 487:

"Count Tommaso's death." Browning found (B., 129) that Guido was the son of Tommaso (or Thomae) Franceschini. Cf. Note 44.

49—RB., V, 188:

> Countess Beatrice, whose son I am.

Donna Beatrice's character had evidently excited the Poet's indignation, as his references to her are almost fierce in their denunciation. Cf. RB., I, 571; II, 332-4; 486-91; X, 910-25. The foundation for this is largely in the servant's affidavit (B., 38-42), where the Donna Beatrice appears in a very unenviable light. The Casanatense pamphlet (p. 219) calls her a "proud, avaricious woman." Pompilia speaks slightly of her sufferings at the hands of her mother-in-law (B., 69). She bears strong relationship to the "tall pale yellow Duchess," the mother-in-law in *The Flight of the Duchess.*

50—RB., X, 880-1:

> This fox-faced horrible priest, this brother-brute
> The Abate,

Browning seems to express in these words his loathing of the Abate Franceschini, who was the counsellor and abettor of Guido in every step from the proposal of marriage with Pompilia (B., 169, 170) to the murder itself (Note 304). He is described (B., 116) as "an active and diligent man." The second Anonymous Writer, however, brings out the tricky and mean side of his nature, calling him (B., 176) "the manipulator of all they did, nor was a straw moved without his assistance"; and (B., 182) arraigns him bitterly. He is mentioned among the poets of Arezzo and was probably a man of fair education and good literary talent. The Casanatense pamphlet (pp. 217-8) gives a fuller sketch of his character and career. He rose by his native genius to the secretaryship of Cardinal François Lauria, a distinguished member of the Sacred Congregation. It was this cardinal who signed the marriage agreement (B., 88). At the death of Cardinal Lauria, November 30, 1693, he rose to the lucrative and honorable post of secretary of the Order of St. John of Malta, but was forced to resign (C., 221) a few months before the murder because of the ill fame of himself and his brother Guido. Cf. RB., I, 553; II, 292; III, 251-3, 412-4; IV, 391-3.

51—RB., X, 897-900:

> The boy of the brood, the young Girolamo
> Priest, Canon, and what more? nor wolf nor fox,
> But hybrid, neither craft nor violence
> Wholly, part violence part craft:

Here we probably have the Poet's opinion of the Canon Girolamo Franceschini, who appears in no enviable light in the Book. It is evident (B., 10) he was accused of having tried to poison Pompilia, and the popular pamphleteer (P., 209) says he had rushed upon her murderously with a dagger. This latter, however, was perhaps a mistaken version of his attack on Violante (B., 40). The servant's affidavit gives several instances of his abuse of the Comparini. Cf. RB., I, 553; II, 491; IV, 396-9; X, 452.

52—RB., V, 640-1:

> the satyr-love
> Of whom but my own brother, the young priest,

This accusation against the Canon Girolamo (which is referred to RB., II, 498-501, 1292; VI, 844-6; VII, 808-14; X, 907) is based solely upon (B., 44): "That the Canon, my brother-in-law, had solicited me dishonorably, a thing that had never been thought of by him." This is a part of Guido's forged letter.

53—RB., III, 51:

"Monna Baldi." Probably suggested by the name Monna Baldi Albergotti (B., 38).

54—RB., VI, 521-2:

> Count Guido's kind of maid—
> Most of us have two functions in his house.

Maria Margherita de Contentis, who brought the first forged letter to Caponsacchi (B., 73), testified during the *Processus fugæ* to the passage of love-letters and to clandestine meetings between Pompilia and Caponsacchi, but her evidence was rejected on the ground that she was a harlot (Note 171). She is probably the witness referred to in B., 117. Cf. B., 62, 93, 143, 146.

55—RB., II, *Half Rome:*

This speaker, who typifies half of the popular opinion of Rome concerning the murder trial—namely that in favor of Guido—was probably suggested by the Italian pamphlet entitled *Notizie di fatto,* etc., pamphlet 10 of the Book. Its author was evidently well acquainted not merely

with all the evidence of the murder case and of the *Processus fugæ,* but also with the technical points of the law in the case. He tries to be popular in style, but soon lapses into professional pleading. The pamphlet is mentioned only once in the legal arguments of the Book, namely, during Bottini's long closing argument (B., 152). This would indicate that it was composed late in the trial, probably not earlier than February 10. Its reference to Conti's death as a month ago (Note 36) agrees with this. It was composed to stir public sentiment in behalf of the accused assassins. Certain stylistic mannerisms, and the points and illustrations offered lead to the belief that Arcangeli himself composed it. To-day such material would be put in the columns of our large dailies, but in 1698 the pamphlet was still one of the most effective means for leading public opinion.

Half Rome of the Poem is more popular in style and is almost colloquial in tone, but deals with the facts of the case from the same standpoint of prejudice in favor of Guido. It commences with a long account of the earlier condition of the Comparini (Notes 63, 65, 67, 70), lays stress upon their subsequent financial difficulties (Notes 71-3), emphasizes the craft of the Comparini, particularly of Violante, in advancing the marriage (Notes 74, 77), in making Guido their guardian (Note 90), blames them for the domestic quarrels which afterward arose in Arezzo (Note 95), censures Pompilia for her conduct after the departure of her parents, etc. Browning has taken this standpoint of the pamphlet and has vivified it by placing it on the lips of one of the sensation-lovers of the day, who is talking on the gossip-loving level of Rome. He has even caught from the pamphlet the hint as to the inherent prejudice of the speaker in favor of husbands at the expense of wives. Cf. the following note.

56—RB., II, 1537-9:

> All which is the worse for Guido, but, be frank—
> The better for you and me and all the world,
> Husbands of wives, especially in Rome.

This passage, which crowns the jealous husband's narrative, was probably suggested by the closing words of the first Italian narrative (B., 126): "Franceschini should be punished mildly to diminish the force of immodesty and impudence. For the woman is not without adherents, who triumph throughout all Rome in a coterie of treachery, both in public and in private. This is for the oppression and derision against husbands who have regard for their reputation. And they give the title of pedantry to that circumspection which one ought to practice for the preservation of his own honor."

57—RB., I, 873-4:

> Born of a certain spectacle shut in
> By the Church Lorenzo opposite.

The surroundings of the speaker in *Half Rome,* the curious and excited throng pressing into San Lorenzo to see the dead bodies so fully described by *Half Rome* (lines 17-101), was suggested by the popular pamphlet (P., 213): "In the meantime there were exposed in San Lorenzo in Lucina the bodies of the assassinated Comparini, * * * The surprise of the people at seeing the said bodies was great, because of the atrocity of the deed." Cf. RB., VIII, 1352.

58—RB., II, 18:

"This morn." January 3, 1698, the day after the murder. Cf. RB., I, 846.

59—*The Other Half Rome:*

The *Other Half Rome* was probably suggested by the second Italian Pamphlet of the Book, No. 15. The latter says (B., 183): "The intention of the author of the present response is no other than to make clear the falsity of the suppositions against the honor of the poor wife and against the Comparini." It was evidently written in refutation of pamphlet 10, which it meets with irony and scorn as well as with argument. It likewise insists (as does *Other Half Rome*) on the comfortable circumstances of the Comparini (Note 67), on the scheming of the Franceschini to bring about the marriage (Notes 75, 76, 79, 80, 84, 85), on the craft and cunning of Abate Paolo in particular (Note 50), on Guido as their Padrone (Note 90), on the cruel treatment suffered by the Comparini in Arezzo (Notes 95, 98), on the repeated instances of the greed of the Franceschini (Note 46), and on the justification of Pompilia in the various steps of her flight.

The Poet has invented both the situation and the individuality of the speaker without suggestion from the Book. He might have found an excellent situation for one speaker in the scene of the popular turmoil on the reëntry of the captured assassins on the evening following the murder (P., 212). But the speaker's sympathy for Pompilia probably necessitated a somewhat finer nature than would have been found in one trooping after the popular sensation of the day.

60—RB., I, 904:

"Three days ago." The *Other Half Rome* is supposed to speak on January 4, "three days" after the murder, according to the Roman way of counting, January 2-4. Lines 36 and 1640 are in agreement with this date, but line 867 can not be reconciled therewith and should probably read "since three days."

61—RB., I, 903:

> motley merchandizing multitude.

RB., IV, 10-11:

> * * * this rabble's-brabble of dolts and fools
> Who make up reasonless unreasoning Rome.

These sneers may have been suggested by the second pamphleteer's scornful words (B., 168) as to "the dull heads of the crowd" and (B., 168) "to excite compassion, no less in foolish persons."

62—The Pope:

The historic Pope, Innocent XII, had only a slight connection with the Franceschini tragedy. Abate Paolo had made ineffective appeals to him (Notes 280, 281). And when the death sentence against Guido had been stayed tem-

porarily on the grounds of clericate (Note 42), the Pope overruled this delay. The second Anonymous Pamphleteer (B., 183) also speaks of him as "most zealous of justice." He was not otherwise in touch with the case as recorded in the Book. The Casanatense pamphlet, however (p. 223), states that when Guido's crime and arrest were reported to the Pope, "He gave commands that, without delay and with all rigor, trial should be brought, this being a case which, by reason of the consequences that might arise from it, should be examined into with very special attention."

Rev. John Chadwick in reporting a conversation with Browning said: "Of the old Pope of the poem, too, he spoke with real affection," and he goes on to tell of the medallion of the good Pope which was presented to the Poet by a friend, and which he prized so highly. The Dublin Review criticized the Poet for presenting an utterly impossible Pope. There is no doubt that this liberal thought and unchurchmanlike attitude is unhistoric. The Poet was evidently well acquainted with many admirable qualities of this historic Pope, and saw an opportunity to use him as the mouthpiece of his own attitude toward the tragedy. No Pope ever spoke even to himself the theology and church polity of this monologue. The Pope indeed is merely Browning's typical wise old man—a brother of Rabbi Ben Ezra and the Apostle John. (Cf. E., 270-1.)

63—RB., II, 193-4:

These wretched Comparini were once gay
And galliard, of the modest middle class:

The fullest statement of the social and financial condition of the Comparini is given in the pamphlet of the Anonymous Writer (B., 116). This pamphlet and the retort to it dwell on this earliest history of the case and on the trickery of both parties. In this respect they are strikingly like *Half Rome* and the *Other Half Rome*. In the murder case itself this earlier portion of the story is of little importance. Cf. RB., III, 115-26; IV, 70-94.

64—RB., II, 195:

Born in this quarter seventy years ago

RB., I, 798:

Aged, they, seventy each,

At P., 213, the Comparini are called septuagenarians, but as Violante was only 48 at the time of Pompilia's birth (B., 172) she was now 65. Cf. RB., III, 192-3; IV, 75.

65—

Violante Comparini, ne Peruzzi, is spoken of (B., 116) as a "very shrewd woman and of great loquacity," and her own acts and the various indications of character throughout the Book seem to agree with this. P., 209, says: "She was driven by the ambition of establishing her daughter in the home of persons of good birth." Browning has filled out this mere outline of character with interesting fullness till we find her the overbearing, cunning, headstrong woman of the Poem. The Casanatense pamphlet adds other lines to her disagreeable portrait. But even her character is softened in the words of Pompilia. (RB., VII, 269-343.) Cf. RB., III, 133-4.

66—RB., II, 203-4:

In Via Vittoria, the aspectable street
Where he lived mainly;

The sole reference in the Book to this home in Via Vittoria is made at B., 127, the address of Pompilia's letter in the third Summary. In the Poem this street-name is repeatedly used. For Strada Paolina where they lived at the time of the murder, cf. Note 292, also RB., II, 475; III, 74, 364; IV, 455, 476; V, 1333; XI, 969, 1154.

67—RB., II, 200-1:

wealthy is the word,
Since Pietro was possessed of house and land—

B., 116, states that Pietro's property amounted to from 10,000 to 12,000 scudi invested in well-situated houses, and bonds (B., 170). Cf. P., 209.

68—RB., II, 211:

He owned some usufruct, had money's use

Most of Pietro's property seems to have been entailed, he enjoying only the income in part (Note 70), the rest going to a trust fund which an heir would secure for him. This usufruct is spoken of at B., 50, 116; P., 210. Cf. RB., III, 159.

69—RB., IV, 135:

"*Fidei commissum.*" A sum held in trust. Cf. B., 50, 116.

70—RB., IV, 76-7:

moneys so much;
And also with a remnant,—so much more

Probably suggested by the account (B., 116): "The property of Pietro Comparini did not amount to more than the sum of 10,000 or 12,000 scudi, subject to a reversionary interest, coupled likewise with the obligation to compound a good percentage of the income * * * there being a bar against his use of the capital and of a part of the income."

71—RB., IV, 96:

Indulge so their dear selves.

Possibly suggested by the first Anonymous Writer (B., 116): "He was too indulgent to his stomach and was given to laziness."

72—RB., II, 265:

And poverty had reached him in her rounds.

RB., IV, 97:

Pietro finds himself in debt

Suggested by (B., 116): "He was brought down to a state poor and miserable enough," and (B., 194): "his creditors * * * were pressing him hard."

73—RB., IV, 109-10:

He asks and straight obtains
The customary largess,

Suggested by (B., 116): "And after making a statement of his property, received from the Papal Palace secret alms each month."

74—RB., II, 268:

And who must but Violante cast about,

The Anonymous Author (B., 116) speaks thus of Pietro, but Browning probably felt this act was more in accord with Violante's aggressive, scheming character. Cf. RB., III, 132-3, 170-1; IV, 130-45.

75—

Other Half Rome, on the other hand, follows the answering pamphlet which makes the Franceschini brothers set the marriage negotiations under way (B., 169).

76—RB., X, 532-43:

He purposes this marriage, I remark,
On no one motive that should prompt thereto—

This strong protest of the Pope against the marriage of convenience is Browning's, and is not characteristic of the age and society of which it is written. The historic Pope would not have uttered it. It is not the bargain in the marriage, but the cheating in the bargain, which is criticized by the second Anonymous Writer (B., 169-71).

77—RB., II, 344:

What constituted him so choice a catch,

Note that the reply to this question, which presents the selfish purpose of the Comparini, is drawn from the first Anonymous Author (B., 116): "This bargain was advantageous to Pietro and his wife in freeing them from the straits in which they found themselves." Cf. RB., II, 413-5.

78—RB., IV, 440-2.

To the woman-dealer in perukes, a wench
I and some others settled in the shop
At Place Colonna:

Evidently drawn from a reference (P., 209) to a "hair-dresser near the Piazza Colonna," and (B., 169) "in the shop of certain women hairdressers." It was this woman who brought them the news of the eligibility of the match with Pompilia. The Casanatense pamphlet (C., 217-8) dwells more fully on Guido's craft in conciliating and bribing this go-between. According to it Guido's bribe was 200 scudi. Cf. RB., IV, 447-50.

79—RB., IV, 461-74:

I'll to the husband * * *
* * * * * * *
And wait on Madam Violante.'

RB., III, 260:

to Violante somehow caught alone.

B., 169, and P., 209, lay particular stress on the cunning of the Franceschini in approaching Violante, rather than Pietro, the former likening it to the guile of the serpent in Paradise, who attacked Eve rather than Adam. Cf. C., 218.

80—RB., III, 270-5:

He dissertated on that Tuscan house,
Those Franceschini,—very old they were—
Not rich however—

B., 170: "Nor was it difficult for him to astound the woman, because he knew how to impress her very well with the thought of the grandeur of his country, of his first-rate nobility of birth, and of the great income from his patrimony." Cf. RB., IV, 477-88; P., 209, and C., 218.

81—RB., IV, 489:

There's Pietro to convince: leave that to me!

B., 170: "The credulous, but deceived woman so cajoled her husband that she at last induced him to sign the marriage agreement." Cf. P., 209, and C., 218.

82—RB., V, 494-5:

I falsified and fabricated, wrote
Myself down roughly richer than I prove,

In presenting his case before Pietro, Guido made a written statement of properties which yielded him an income of 1,700 scudi, though it was later proved that he did not own a dollar's worth of income-bearing property. Guido claimed he did this at the instigation of Violante. This trick of Guido is frequently spoken of in the Book (B., 57, 170, 171, and P., 209). When taken to task for it by his brother, Guido declared he had done so at the instigation of Violante (B., 117).

83—RB., IV, 490-3:

then
Did Pietro make demand and get response
That in the Countship was a truth, but in
The counting up of the Count's cash, a lie.

B., 170: "Of whom he [Pietro] had had few good reports, and these were far different from the pretended riches, and vaunted nobility." P., 209: "The resources of the Franceschini * * * were quite different from what they had been represented." Cf. RB., III, 396-401.

84—RB., III, 428-9:

Home again * * *
Went Pietro to announce a change

RB., IV, 495:

Declined the honour.

B., 170: "Pietro absolutely refused to go on with the effectuation of the marriage." Cf. P., 209, and C., 218.

85—RB., III, 448-60:

[Violante] * * * holding a girl veiled too,
Stood, one dim end of a December day,
In Saint Lorenzo on the altar-step—
* * * * * * *
* * * * * wed
Guido clandestinely, irrevocably
To his Pompilia

This and the other accounts of Violante's marrying her daughter to Guido without the knowledge of Pietro are based on (B., 170-1): "At any rate, the said Guido joined the said Violante, whom he had imbued with his flatteries and endearments, spurning any further consent of Pietro by keeping him in ignorance of it. And without knowledge of the latter, Guido contracted the marriage with the said Francesca Pompilia in the face of the Church." And P., 209: "The mother of Francesca, not seeing any chance to give her daughter to Franceschini, had her secretly married during December, 1693, in San Lorenzo in Lucina." December is no doubt wrong, as Cardinal Lauria, who died on November 30, had had a hand in the marriage (Note 88 and C., 218). The marriage is not recorded in the register of San Lorenzo in Lucina during the last quarter of 1693. Cf. RB., II, 59-70, 359-78; IV, 495-8; VII, 376-473.

86—Omitted intentionally.

87—RB., II, 380-9:

Once the clandestine marriage over thus,
* * * * * * *
Pietro could play vast indignation off,

B., 171: "When, after a few days, Pietro found out that the marriage had taken place, though he reproved the deed vigorously," etc. In the Poem, Pietro's indignation at the secret marriage is variously told at RB., III, 469-83; IV, 499-504; VII, 489-571. Cf. P., 209, and C., 218.

88—RB., III, 470-6:

Violante sobbed the sobs and prayed the prayers
* * * * * * *
Till Pietro had to clear his brow apace
* * * * * * *
* * * could flesh withstand the impurpled one,
The very Cardinal,

B., 171: "Yet because what is done can not be undone, and by means of the cajoleries of Violante his wife and the interposition of another cardinal [Cardinal Lauria, cf. p. 218 and Note 50], whom the Abate, Guido's brother, served, the poor old fellow was constrained to drink the cup of his bitterness."

Note Pompilia's explanation of his acquiescence, VII, 523-7. Cf. RB., II, 74-8, 156; IV, 1610-1; V, 1797-1801; VII, 545-50.

89—RB, VII, 472-3:

When I saw nothing more, the next three weeks,
Of Guido—

Pompilia (B., 69) says: "After I was engaged to him he stayed here in Rome for two months without consummating the marriage." Cf. line 736.

90—RB., II, 404-5:

They, for their part, turned over first of all
Their fortune in its rags and rottenness

An interesting illustration of the correspondence of *Half Rome* and the *Other Half Rome* with the two Italian Pamphlets of the Book (cf. Notes 55, 59) is seen in the treatment of the turning over of Pietro's property to his son-in-law. *Half Rome's* account (RB., II, 403-17) is drawn from B., 116 (cf. 59, 194); while that of the *Other Half Rome* is drawn from B., 170. Cf. also P., 209, and C., 218.

91—RB., III, 496-7:

Guido gained forthwith
Dowry, his wife's right;

A dowry of 2,600 scudi was given with Pompilia. Cf. B., 116, 170, and P., 209.

92—RB., III, 509-11:

As for the usufruct—
The interest now, the principal anon,
Would Guido please to wait, at Pietro's death:

B., 116: "With the added hope of future succession to the rest of his property." B., 170: "And at the death of the said Comparini for all their possessions."

93—RB., III, 512-16:

Till when, he must support the couple's charge,
* * * * * * *
Bread-bounty in Arezzo

The fact that Guido undertook the obligation of feeding, housing, and serving the Comparini is spoken of several times in the Book (B., 58, 69, 86, 164, 170).

94—RB., II, 429:

They went to Arezzo,—Pietro and his spouse,

The fact that the Comparini accompanied their daughter and son-in-law back to Arezzo is told by Pompilia (B., 69) and elsewhere (B., 10, 50, 117, 171, and P., 209). Cf. also RB., I, 565-8; VI, 792; VII, 559-64.

95—RB., II, 462-525; III, 521-39; IV, 550-72; V, 607-47:

All of these accounts of the family quarrels between the Comparini and Franceschini are suggested by various passages in the Book. The most specific information on the point is found in the long affidavit of the woman servant (B., 38-42). Both the Governor and the Bishop in their letters refer to the troubles and blame the Comparini (B., 68-9 and 76). The Anonymous Writer (B., 117) ascribes the trouble to the "bitter tongue of Pietro" and the "haughtiness of Violante." Whereas, Bottini (B., 57) says: "Notorious indeed are the altercations which, on account of the parsimony of the home, straightway arose," etc. Cf. C., 219: "The mother of Guido, a proud, avaricious woman, who governed the household despotically, took to stinting it even in the necessary food. This moved the Comparini to complaints, to which they first responded with insults and then with threats." Cf. B., 50, 171, and P., 209.

96—RB., II, 497:

where Violante laid down law.

The letter of the Governor of Arezzo asserts (B., 68) that "Signora Violante * * * presumed to domineer over the house and to keep the keys of everything." And Arcangeli practically echoes this charge (B., 87).

97—RB., II, 507-10:

And Pietro, * * * the wine-house bench—

B., 68: "Signor Pietro had given over the company and conversation of the best people of the city, and had struck up acquaintance with the most vulgar. And with them he began to frequent daily all the taverns there. This was little for the good name of the Franceschini." Cf. also B., 87.

98—RB., II, 504:

Four months' probation of this purgatory,

Pompilia (B., 69) says that her parents remained in Arezzo four months, while B., 57, 171, speak of a few months. These probably were the winter months of 1693-4, as they went there in December (P., 209) and were in Arezzo during both January (B., 38) and February (B., 39, 58). Cf. RB., III, 522; IV, 568; V, 617; IX, 276-8; XI, 1195.

99—RB., IV, 569-70:

To beg him to grant, from what was once their wealth,
Just so much as would help them back to Rome

B., 118, states that "they were provided with money for the journey, and in Rome with furniture to put in order the house they had left." But P., 210, says that they had to "beg it of Franceschini, who scarcely gave them the necessary expenses of the journey." Cf. C., 219.

100—RB., III, 529-36:

> The starved, stripped, beaten brace of stupid dupes
> * * * * * * *
> * * * carried their wrongs
> To Rome,—

The second Anonymous Writer (B., 171) says: "Such were the miseries and abuses the Comparini had to suffer in victuals and in harsh treatment that they were obliged to return to Rome after a few months." Cf. also B., 10, 50, 69, 100, 210, and RB., I, 569-77; II, 519-25; V, 764-5; VI, 794; XI, 1199-1201.

101—RB., II, 534-7:

> Once in Rome.
> * * * * * * *
> Her first act to inaugurate return
> Was, she got pricked in conscience:

RB., III, 180:

> Made in the first remorse:

RB., IV, 575:

> * * * feeling conscience prick,

B., 172: "Urged on by remorse of conscience."

102—RB., II, 537-8:

"Jubilee gave her the hint." B., 172: "At the time of Jubilee." Cf. P., 210, and RB., III, 180, 555-65.

103—RB., II, 549-51:

> She confessed
> Pompilia was a fable not a fact:
> She never bore a child in her whole life.

P., 210: "Violante Comparini revealed in confession that Francesca Pompilia * * * was not their daughter." Cf. B., 172. See also the elaborate and interesting account of Violante's confession, RB., III, 566-82, and IV, 576. Cf. C., 219.

104—RB., III, 583-98:

> Replied the throne—"Ere God forgive
> * * * * * * *
> Tell him, and bear the anger which is just!"

B., 172: She "was constrained by her confessor * * * to reveal it to Pietro," etc. Cf. P., 210.

105—RB., II, 558:

> The babe had been a find i' the filth-heap,

There is no room for doubt that Pompilia was of vile parentage. The Anonymous Writer (B., 118) speaks of her as being "of most vile parentage." Her mother is spoken of as "*meretrix*" (B., 97, 99); "*vilissima lotrix*" (B., 10); "*vilissima et inhonesta mulier*" (B., 17); "a poor widow and stranger" (P., 210). The Casanatense pamphlet gives a somewhat different account (C., 219). The Poet repeats the fact in one after another of the monologues, and he makes their attitude toward the fact something of a revelation of the speakers' own characters. They range from the brutal hatred of Guido to the tender, loving comment of Pompilia upon her own mother. Cf. RB., II, 549-83; III, 208, 549-668; IV, 149-91, 575-80, 611-2; V, 88-9, 768-74; VII, 131-2, 139-45, 864-94; XI, 1217.

106—RB., V, 90:

> Her mother's birthright-license

RB., VII, 863:

> —Adding, it all came of my mother's life

Arcangeli accuses Pompilia of being like her mother in evil life (B., 18): "Nor was it difficult to persuade that girl to do what she was prone to by inborn instinct, and by the example of her mother." Cf. B., 99.

107—RB., II, 580:

> Partly to cheat the rightful heirs,

B., 118, gives Violante's motive in the fraud as her desire to keep "her husband's creditors from their rights" and P., 210, "this had been adopted to bring it about that the reversionary interest would fall to their house, and hence to make good the many debts of her husband." Cf. RB., III, 194-6; IV, 218-9. Browning's various versions of the cheat and the motive which lay behind it are given, RB., II, 58, 219-47; III, 179-229; IV, 131-210; VII, 270-300; VIII, 875-8.

108—RB., II, 597:

"The biter bit," possibly suggested by the ironic comment on the trick at B., ccxii: *ars deludit arte*. Cf. RB., V, 1360-1.

109—RB., II, 656-67:

> they noised abroad
> Not merely the main scandal of her birth,
> But slanders written, printed, published wide,

The Book makes several references to the fact that Guido had suffered thus at the hands of Pietro. B., 144, speaks of "pamphlets about the domestic scantiness and the base treatment suffered." Cf. also B., 27, 118, 154, 164. Probably the servant's affidavit (B., 38-42) was thus slanderously circulated throughout Rome. Cf. RB., II, 671-6; IV, 640-5; V, 765-7; XI, 1225.

110—

This affidavit of Angelica was evidently secured by Pietro to aid him in his suit, 1694, to recover the dowry paid to Guido and to annul the dowry contract (Notes 260-2). It was probably a part of the injurious publications (Note 109) circulated by Pietro throughout Rome to the detriment of Guido. Browning uses its facts only slightly (Notes 117-9), but from it gained almost all of his detailed knowledge of the penury and parsimony of the Franceschini and of the sufferings of the Comparini while staying in Arezzo. The affidavit is referred to by the lawyers of the Book (B., 58, 86, 117).

111—

The attestations (B., 42-3) concerning the ill-treatment which Pompilia had suffered in the home of her husband were evidently secured as a part of her defense in the *Processus fugæ*. It is interesting to note among the witnesses the names of a Conti (not the Canon) and of Confessor Romano, to whom Pompilia had had recourse in vain.

112—RB., II, 684-6:

she wrote,
* * * * * * *
* * * her husband's brother the Abate there,

This letter of Pompilia to Abate Franceschini is twice given in full in the Book (B., lv and lxxxvii). During the trial for murder, it was subject to frequent discussions by the lawyers (B., 10, 18, 59, 87, 142, 154, 195; and P., 210). It seems also to have been formerly presented as evidence in the *Processus fugæ* (B., 44), but had been "rightly rejected by the judges" (B., 142). We quite agree with Lamparelli (B., 195) "it is certain that if the letter be read attentively, it will be absolutely impossible to assert that she had written it with a calm mind." The letter is so grossly impossible from such a young girl, that it must have been of Guido's drafting. And if so, inasmuch as it forecasts the flight of Pompilia with a lover, and other later developments of the case, we are led to infer that the whole of this later trouble was the deliberate plot of Guido, as charged in RB., III, 712-37. Cf. Note 121; also RB., III, 738-71; IV, 769-86; V, 834-43; VIII, 158-72; IX, 809-21.

113—RB., II, 721:

Word for word, such a letter did she write,

This refers to the contents of lines 689-718, which are indeed a fairly close adaptation of the original (B., 44). The letter is repeated again in this way by *Tertium Quid,* IV, 778-84. Cf. RB., II, 689-718.

114—RB., III, 751-3:

This letter, traced in pencil-characters,
Guido as easily got re-traced in ink
By his wife's pen,

Evidently based on Pompilia's explanation of the letter as given (B., 72): "My husband wrote the letter with a pencil, and then made me trace it with a pen and ink it." Cf. RB., III, 1315-6; IV, 770-2; V, 842-3; VIII, 161-4; IX, 816-21.

115—RB., VII, 746:

Go this night to my chamber, not your own!

Cf. B., liv: *Fece strepito grande, perche non voleva andare a dormire col Signor Guido, suo Consorto;* also cf. B., 90: *Renuebat jacere cum viro.*

116—RB., IX, 1338-41:

who had been harassed and abused
* * * * * * *
For non-production of the promised fruit
Of marriage?

In her affidavit (B., 69) Pompilia says: "As I did not become pregnant, my husband and my mother-in-law Beatrice began to turn against me because I had no children." Cf. P., 210.

117—RB., V, 70-4:

—How she can dress and dish up—lordly dish
Fit for a duke, lamb's head and purtenance—
With her proud hands, feast household so a week?
No word o' the wine rejoicing God and man
The less when three-parts water?

The servant in her affidavit (B., 40, 41) speaks of the lamb and lamb's head cooked and divided by Donna Beatrice, and of the diluted wine for the table.

118—RB., IV, 360:

Creeps out a serving-man on Saturdays

B., 40: "When he did not buy the lamb on Saturday * * * Signor Guido gave money to Joseph, the house-boy," etc.

119—RB., V, 1388:

"The coarse bread." B., 41 says: "The bread was as black as ink, and heavy, and ill-seasoned."

120—RB., V, 1361-3:

and truly divers scenes
Of the Arezzo palace, tickle rib
And tease eye till the tears come, so we laugh;

Probably refers to the making public of the servant's testimony (B., 38-42). Cf. Note 109.

121—RB., VI, 1795-8:

That he, from the beginning pricked at heart
By some lust, letch of hate against his wife,
Plotted to plague her into overt sin
And shame, would slay Pompilia body and soul,

This accusation that Guido plotted to drive Pompilia to Caponsacchi's arms, while it is not referred to in the Book, seems not improbable in the light of certain facts given there. The letter which he forced Pompilia to write (Note 112) forecasts many of the grossly improbable crimes with which he taxed his child-wife three years later. The love-letters (Note 232) are almost impossible of explanation save as part of some such deliberate scheme. This is quite in accord with the ascertained character of Guido, who was crafty and cruel. Cf. Note 150; also RB., III, 721-37, 776-87, 1356-9; IV, 663-98, 749-51; VII, 695-9; X, 603-13; and E., 278.

122—RB., IV, 788-90:

All sort of torture was piled, pain on pain,
On either side Pompilia's path of life,
Built round about and over against by fear,

Pompilia tells (B., 70) of the cruelties of her husband, attributing them to her sterility and his jealousy of her. Elsewhere in the Book general reference is made to the ill-treatment suffered by the wife. Cf. Notes 128, 129, 132-4.

123—RB., V, 896-902:

It was in the house from the window, at the church
From the hassock * * *
That still Pompilia needs must find herself
Launching her looks forth, letting looks reply
As arrows to a challenge;

This charge of general flirtation is told by Pompilia herself (B., 70), where she asserts that it was without foundation. Arcangeli reiterates the charge (B., 91): "The wretched Accused complained bitterly that she was not content merely with a single lover at Arezzo, but that she had been defiled by many suitors." Cf. RB., VII, 677-80; IX, 298-301; and P., 210.

124—RB., II, 809-10:

Pompilia chose to cloister up her charms
Just in a chamber that o'erlooked the street,

Possibly suggested by (B., 70): "My husband began to be jealous of me and forbade me to show my face at the window."

125—RB., II, 861:

Or wife and Caponsacchi may fare the worse!

Both Pompilia and Caponsacchi mention the threats of Guido (B., 70, 74).

126—RB., VII, 684-5:

I tried to soothe him by abjuring walk,
Window, church, theatre, for good and all,

B., 70: "To remove that occasion of jealousy I never showed my face save when it was absolutely necessary."

127—RB., II, 833-4:

Your lady loves her own room, sticks to it,
Locks herself in for hours, you say yourself.

Cf. Pompilia's words (B., 70): "I retired to my room whenever he came to our house, that I might not have to take even more trouble." Also cf. B., 173, 180.

128—RB., V, 938-46:

This account of Guido's jealousy of Caponsacchi is founded on Pompilia's story of the jealousy (B., 70): "Because the Canon Caponsacchi with other young men of the place used to pass before our house * * * my husband began to fume with anger at me." Cf. RB., II, 805-7, 835; and Bottini's contemptible assertion of shrewd intrigue (RB., IX, 335-75).

129—RB., VII, 693-4:

Cease from so much as even pass the street
Whereon our house looked,

Pompilia (B., 70) says: "And begged him not to pass that way, that he might relieve me from all the distresses," etc.

130—RB., VI, 653:

Tell him he owns the palace, not the street

This reply of Caponsacchi to the request given in the preceding note is suggested by B., 70: "He replied that * * * Guido could not stop his passing along the street."

131—RB., VI, 394-433:

Found myself at the theatre one night

This incident of the comfit-throwing at the theatre is told by Pompilia (B., 70): "While we were in a great crowd at the play one evening, Canon Conti, the brother of the husband of my sister-in-law, threw me some confetti. My husband, who was near me, took offense at it—not against Conti, but against Caponsacchi, who was sitting beside the said Conti." We have here an excellent example of Browning's master power in raising the fact of the Book to a higher emotional and moral plane. Cf. RB., II, 801; IV, 944; VII, 950-90.

132—RB., VII, 1029:

O Christ, what hinders that I kill her quick?

Pompilia tells of these words (B., 71): "As soon as we had returned home, he pointed a pistol at my breast, saying: 'O Christ! What hinders me from laying you out here? Let Caponsacchi look to it well if you do not wish me to do so, and to kill you.'" Cf. B., 60.

133—RB., IV, 1069-70:

The silent *acquetta*, stilling at command—

RB., V, 948-9:

Showing hair-powder * * *
For poison

There are several accusations that Guido threatened to poison his wife (B., 173): "The said Guido had made a mixture of poison, with which he threatened he would take her life without the uproar attendant on the use of arms; and thus he would be the surer of his crime going unpunished." Cf. B., 71, 144, 173, 174, 177. B., 10, also speaks of an accusation against the brother, Girolamo, that he too had offered her poison (Note 51). Cf. RB., V, 1737; VII, 1250; IX, 381.

134—RB., V, 949-50:

making believe
At desperate doings with a bauble-sword,

The threat of poison and sword are coupled (B., 144): "The wife was continually afraid that he would kill her, either with the sword or by means of poison." Cf. B., 173, and RB., VII, 1250; IX, 380, 1149.

135—RB., II, 874:

She bade the Governor do governance,

Pompilia thus driven to desperation, evidently turned for help to the Governor (*Commissario*) of the city (B., 42, 58, 143, 173, 195, 210). This is referred to even more frequently in the poem, RB., III, 967-9; IV, 799; V, 1825; VI, 822-30; VII, 1265; IX, 262-3, 993; X, 971-81; XI, 1331—an interesting illustration of the possibilities of varying a given fact.

136—RB., VI, 2051:

"Vicenzo Marzi-Medici." He so signs himself in his letter (B., 69), and the Bishop of Arezzo (B., 77) speaks of "Signor Senator Marzi-Medici, who presides over the laic government of this town."

137—RB., III, 997-8:

* * * promised the pair,
Wholesome chastisement * * *

This threat of the Governor in reply to the recourse to him is found in his own letter (B., 69): "I threatened them with prison and punishment unless they behaved themselves." Cf. RB., X, 977-8, and Note 147.

138—

This letter of the Governor of Arezzo (B., lxxxi-ii) to Abate Franceschini under date of August 2, 1694, was evidently written as part of the quarrel and lawsuit between the Franceschini and Comparini. It is ample evidence of the fact that Pompilia could have no hope of help in such a man, after her first recourse to him (Note 135). It is cited by the lawyers in their arguments (B., 87, 88, 117, 143).

139—RB., II, 875:

Cried out on the Archbishop.

Pompilia's appeal to the Bishop of Arezzo is still more frequently mentioned. She says

(B., 71): "At the beginning of these troubles, I went twice to Monsignor the Bishop, because he might have remedied it in some way; but this did no good because of his relations with the house of my husband." The Governor of Arezzo, in his letter under date of August 2, 1694, says (B., 68): "Of much greater scandal were the many flights and petitions made by Guido's wife, their daughter, to Monsignor, the Bishop." The lawyers interpret this fact according to their prepossessions: Arcangeli (B., 89) speaks of the "eager and indecent recourse without cause to the most reverend Bishop" and offers evidence to show that she was unwilling to live with her mother-in-law and brother-in-law. Bottini, on the other hand (B., 143), accuses the Bishop and Governor of having carelessly rejected her recourse to them. Cf. B., 42, 43, 58, 76, 87, 143, 173, 195, and P., 210. C., 220, gives some additional information concerning the fact.

This fact of her recourse to the Bishop is also much repeated in the Poem (RB., III, 970-89; IV, 801-6; V, 1823-31; VI, 822-30; VII, 748-859, 1264; IX, 262-3, 994; X, 986-93, 1454-70; XI, 1332).

140—RB., II, 876:

Three successive times

RB., IV, 801:

Flung herself thrice

RB., V, 1823:

not once, but so long as patience served—

Pompilia in the preceding note speaks of twice making such appeal (B., 76); the Bishop himself says she made "some recourse" to him. He speaks of this as having happened many times (B., 44). I find no authority for the definite thrice of the Poet. Cf. RB., III, 1003.

141—RB., II, 879:

"On the public steps thereto." This detail seems to be suggested by (B., 43): "She took her station at the head of the stairs and stayed there," etc.

142—RB., III, 1011:

"Coached her." Probably suggested by the Governor's words (B., 68): "When she had been rebuked by that most prudent Prelate, he always sent her home in his carriage." And the Bishop himself (B., 77) says: "I had her taken home in my carriage twice." Cf. P., 210.

143—

The letter of the Bishop of Arezzo (B., xci-ii or 76-7), like that of the Governor, was in all probability written to be used by the Franceschini in defending themselves from the accusations and the lawsuit of the Comparini in the year 1694. Evidently there was little help for Pompilia in flight to such a man. It is used in legal argument (B., 88, 143).

144—RB., III, 1015-7:

* * * as a last resource, betook herself to
* * * * * * *
A simple friar o' the city,

Pompilia makes the sole reference in the Book to this fact (B., 71): "I went about a month later to confession to an Augustinian Father, whom they call Romano. I told him all my distresses, imploring him to write to my father in my name, * * * and to tell him that I was desperate, and must part from my husband and go to him in Rome. But I had no response." This fact is repeated in the Pamphlet (P., 210). Probably the Priest Romano, who (B., 42) signs the affidavit concerning Pompilia's distress in her husband's home, is the one referred to by Pompilia. Browning's variations upon this fact are interesting. Cf. RB., IV, 807-41; VI, 831-56; VII, 1282-1302; X, 1471-85.

145—RB., VI, 2026-7:

She only tried me when some others failed—
Began with Conti,

This fact is brought out by the second Anonymous Author (B., 173): "She intrusted herself to the Canon Conti, who is closely related to the Franceschini, and declared to him her miseries, her perils, and her just fears (although they were not unknown to him) * * * He was touched with living compassion and moved to free her therefrom by pity for her grievous state." This fact is repeated by the Pamphleteer (P., 210). Cf. B., 196; RB., VII, 1309-16, and Note 35.

146—RB., VII, 1304-6-8:

Last, in a desperation I appealed
* * * * * * *
To Guillichini, that's of kin,
* * * A flying gout

Pompilia, in a letter to her father, states (B., 127) that Guillichini had planned to accompany her, but had been prevented by ill health. His help in arranging the flight is likewise mentioned (B., 62, 63, 159, 196, and RB., II, 933-6; V, 1016; VI, 2028).

147—RB., VII, 1267-71:

'twas he who,—when I gave
A jewel or two, themselves had given me,
Back to my parents,—since they wanted bread,
* * * * * * *
Spoke of the jail for felons,

This was evidently suggested by (B., 87): "He was compelled by the Governor of the City, under fear of imprisonment, to restore certain trinkets and gems of his daughter, which he had taken away." Cf. Note 137.

148—RB., IV, 963-4:

Could no one else be found to serve at need—
No woman

Guido's lawyers raise this very question (B., 92), and retort is made by the other side (B., 144).

149—RB., III, 1040-2:

"At last * * * found Caponsacchi." Pompilia (B., 71) says: "Therefore, not knowing to whom I might turn, * * * I finally resolved to speak to the said Caponsacchi." Cf. RB., III, 1345-8.

150—

The actual communication between Pompilia and Caponsacchi, in letter and in conversation before their flight together, is subject to some

dispute. Each of them makes definite statement of the matter in their respective affidavits. But Guido and his lawyers attempted to show far greater intimacy between them. Arcangeli (B., 94) says: "It is undeniable that the carnal love was reciprocal between them." Guido tried unsuccessfully to establish his claim that the love-letters (cf. Note 232) had been part of this correspondence. He also accused them of clandestine meetings (Note 170). On the face of the facts it does not seem improbable that Guido attempted to drive them together in a criminal intrigue, that he might rid himself of his wife (Note 121), for Guido's first jealousy of Caponsacchi, as told by Pompilia (B., 70), is so utterly unfounded that it may easily have been a part of a deeper plot.

151—RB., II, 780-811:

The occasion of Guido's original jealousy of Caponsacchi is told by Pompilia (B., 70). Cf. RB., VII, 1036-43.

152—RB., II, 805:

And, ever on weighty business, found his steps

Possibly suggested by (B., 70): "And then because the Canon Caponsacchi, with other young men of the place, used to pass before our house."

153—RB., VI, 482:

I told friends—"I shall go to Rome."

Suggested by the real Caponsacchi's words (B., 73): "I had to go to Rome on my own business, and as I told my secret," etc. Cf. RB., VI, 812; VII, 1209-11.

154—RB., VI, 506-7:

In glided a masked muffled mystery,
Laid lightly a letter on the opened book,

B., 73: "Hence a letter, sent to me by Francesca, was brought one day by a certain Maria, then a servant of the Franceschini." At B., 72, Pompilia denies ever having sent a letter to Caponsacchi. Browning explains the difference of assertion (RB., VII, 1105-25). Cf. RB., IV, 1025-6.

155—RB., VI, 485:

"By the mid-March twilight." Browning evidently means to place this incident a few weeks prior to the flight which occurred in latter April.

156—RB., III, 899-901:

That it was not he made the first advance,
* * * * * * *
Pompilia penned him letters,

This insistence that Pompilia made the first advance is repeated (RB., IV, 967-77; IX, 501). Pompilia herself speaks of having first asked Caponsacchi not to pass along their street (B., 70). Cf. Note 129.

157—RB., VI, 510-19:

This description of the contents of the letter brought by Maria is drawn from contents of the forged love-letters, as will be seen in the subsequent detailed notes. Cf. Caponsacchi's statement as to its nature (B., 74) and his angry rejection of a counter assertion (B., 76).

158—RB., VI, 516-7:

Where the small terrace overhangs a street
Blind and deserted, not the street in front:

Possibly suggested by (B., 81): "Now the street-door is no longer opened, but you might be able to open the back door."

159—RB., VI, 519:

At his villa of Vittiano.

RB., V, 1142:

He's at the villa, now he's back again:

B., 78: "The jealous one is away," and B., 80: "Signor Guido returns Saturday morning." Cf. RB., VI, 591.

160—RB., VI, 528-9:

Then I took a pen and wrote
"No more of this!"

Caponsacchi states his response to the above letter as follows (B., 74): "I answered her that I was unwilling to do anything of that kind, or to expose myself to such a risk." Pompilia (RB., VII, 1121-5) states that a love-letter was delivered to her at this time by Maria, but elsewhere (B., 72) says she had received no letters from Caponsacchi; and Guido's lawyers in their marginal annotation brand this statement as a lie.

161—RB., VII, 1125:

"My idol." Used in one of the forged love-letters (B., 81).

162—RB., VI, 559:

"Myrtilla." The name Mirtillo is found in the letters (B., 77, 82). Cf. RB., VII, 1153; IX, 541.

163—RB., IX, 541:

"Amyrillis she." The name is used repeatedly in the forged love-letters (B., 77, 78, 81, 82).

164—RB., VI, 564:

The Baron's daughter or the Advocate's wife,

In the love-letters, jealous reference is made to rival sweethearts (B., 81).

165—RB., VI, 574:

"At the Ave. Come!" One of the love-letters (B., 81, 82): "Come this evening at seven o'clock." Cf. RB., VII, 1377.

166—RB., VI, 587:

Why the man's away!

(B., 82): "Signor Guido is going out of the city, and will be gone several days."

167—RB., VI, 618:

And so the missives followed thick and fast

Caponsacchi says (B., 74): "She continued making the same request to me, by flinging, from time to time from the window, a note."

168—RB., VI, 642:

Will stick at nothing to destroy you.

Caponsacchi in his affidavit (B., 74) says: "He (Guido) would also be avenged on me."

169—RB., VI, 928-31:

So, he not only forged the words for her
But words for me, made letters he called mine:
What I sent, he retained, gave these in place,
All by the mistress-messenger!

This is Browning's explanation of the apparently irreconcilable clash of statements as given in the above notes. That is, Guido had stood between his wife and Caponsacchi, forging a correspondence by which he hoped to bring them together. He may have practiced this forgery in making up the packet of pretended love-letters. Such a sinister explanation is by no means the result of a prejudice on the Poet's part, but seems justified by the material he had before him.

170—RB., VI, 1674-5:

And what of the clandestine visits paid,
Nocturnal passage in and out the house

RB., III, 1095:

Whither and whence blindfold he knew the way,

Charges of other meetings—clandestine visits of Caponsacchi to Pompilia—are made by Guido's lawyers (B., 11, 93) and are denied by their opponents (B., 62, 146, 198). Cf. RB., IV, 1028-31; V, 1003-5; IX, 559-61. In the last, Bottini gives as usual his sophistical version and interpretation of the matter.

171—RB., III, 1097-1104:

cites for proof a servant,
* * * * * * *
A common trull

The testimony of Maria Margherita Contenti is given (B., 93), and was rejected on the ground that she was a harlot (B., 62, 143, 146, 198). Cf. Note 54.

172—RB., VI, 1691-2:

Sub imputatione meretricis
Laborat,—which makes accusation null:

This Latin passage is not found in the Book, but the point of law is made (B., 62, 198). The Poet probably found the words in some old legal authority which he had followed up in one of the numerous citations on the point.

173—RB., V, 56:

Take to the window at a whistle's bid,

This charge is made against Pompilia by Arcangeli (B., 91, 93), and Bottini makes reply (B., 146).

174—RB., IX, 566-8:

who dared maintain
That midnight meetings in a screened alcove
Must argue folly in a matron—

Bottini carries this sophistry to an even more absurd extreme (B., 149).

175—RB., VII, 1207:

"Now Easter's past." Easter, 1697, fell on April 7, a fact which the Poet had probably ascertained.

176—RB., VII, 1208:

And the Archbishop gets him back to Rome,

The forged letter supposed to be from Caponsacchi (B., 82) speaks of this fact. "Wednesday the Bishop departs with three carriages."

177—RB., VI, 702-4:

"And there at the window stood * * * Pompilia." Caponsacchi (B., 74), speaking of their interview, says: "She being at the window."

178—RB., III, 912-3:

Nor had she ever uttered word to him, nor he
To her till that same evening when they met,

Browning does not use at any point Pompilia's account of her first interview with Caponsacchi (B., 70), as it would have marred the strong emotional tone of Caponsacchi's account of their first meeting (RB., VI, 702-4).

179—RB., III, 916-8:

And she adjured him in the name of God
To * * * bring to pass where, when and how
Escape with him to Rome might be contrived.

The story of their second and more important meeting is told by Pompilia (B., 71). According to this account, Caponsacchi showed considerable reluctance about entering upon the matter. Then follow the significant words (B., 71): "But I implored him * * * and told him it was the duty of a Christian to free from death a poor foreign woman." Browning has given an account of this meeting from the lips of both of them, and to both it was one of the crises of life. Cf. RB., VI, 701-894, and VII, 1404-47.

180—RB., III, 1175-6:

no pretext
For aught except to set Pompilia free.

Caponsacchi's words (B., 74) are: "Accordingly, with this purpose, to free myself from every difficulty and danger, and also to save from death the said Francesca," etc.; and Bottini (B., 61) says it was from mere pity, and her honesty was kept entirely intact. Cf. RB., IV, 996-7.

181—RB., VII, 1459:

Next night there was a cloud came, and not he:

RB., VI, 1065-6:

Why is it you have suffered me to stay
Breaking my heart two days more than was need?

This delay of two days at this critical juncture is told of in the words of Pompilia (B., 71): "But the next day went by and, although I stood at the blinds, he did not give the signal. When the day following had also passed, I spoke to him again as above and complained to him that he had broken the word he had given me." Browning has made this delay of two days take a profound meaning in the life of his hero, a time of rapid growth to the full stature of Christian heroism (RB., VI, 937-1062). But the Poet's Pompilia merely says—forgetting the cruel anxiety of the delay in such peril—

I prayed through the darkness till it broke.

182—RB., VII, 1462:

The plan is rash; the project desperate:

Possibly suggested by (B., 71): "He replied that he did not wish to meddle at all in such an affair, as it would be thought ill of by the whole city"; or by (B., 74): "I answered her that I was unwilling to do anything of the kind, or to expose myself to such a risk." Cf. P., 211.

183—RB., VI, 890:

If I am absent, drop a handkerchief

Pompilia speaks of this signal (B., 71).

184—RB., VI, 1110-1:

This being last Monday in the month but one
And a vigil, since to-morrow is Saint George,

Both Pompilia and Caponsacchi (B., 71 and 74) speak of the flight as beginning the last Sunday night of April (which was April 28), and Caponsacchi says they reached Castelnuovo (B., 74) on the "last evening of the month"—that is, the flight lasted from very early Monday morning, April 29, till the evening of April 30, and they were arrested by Guido the next morning, May 1 (cf. B., 7, and P., 211). The Poet has discarded this date for April 23, St. George's day, in all probability, that he might take advantage of the chance association of his "soldier-saint" with the famous English ideal of Christian knightliness, St. George. Other dates connected with the flight are changed accordingly (cf. Note 28). Cf. RB., II, 889: "One merry April morning"; III, 1065-6, "on a certain April evening, late i' the month."

185—RB., VI, 1078:

"There's new moon this eve." This mere chance remark was evidently verified by Browning, as the supposed date, Sunday, April 22, 1697, was indeed new moon. See the letter of Mr. Barrett Browning (Note 536).

186—RB., VII, 1479-81:

You, whom I loathe, beware you break my sleep
This whole night! Couch beside me like the corpse
I would you were!

Suggested by Pompilia's words (B., 72): "I went to bed with my husband that evening, and when I had assured myself that he was asleep," etc.

187—RB., V, 1012:

"At the seventh hour of night" (B., lxxxix or 74) "alle sett' hore in circa." Cf. also B., 7.

188—RB., V, 1013:

"Later, at daybreak." Pompilia gives the time as "at dawn" (B., 72). Cf. B., 211.

189—RB., V, 1020-3:

But the gates are shut,
In a decent town, to darkness and such deeds:
They climbed the wall—your lady must be lithe—
At the gap, the broken bit . . .—"Torrione, true!"

Evidently based on (B., 7): "As the gates of the City were closed they climbed the wall on the hill of the Torrione, and having reached the Horse Inn outside of San Clemente," etc. Cf. RB., VI, 1080, 1089.

190—RB., V, 1022:

"They climbed the wall." Suggested by (B., 7 and 8): "Climbed the walls of the City."

191—RB., V, 1025:

Clemente, where at the inn, hard by, "the Horse."

B., 7: "And having reached the *osteria di Cavallo* outside of the gate of San Clemente." This inn is now used as a poor tenement house. Cf. B., 74, and RB., VI, 1082-4.

192—RB., V, 1026:

Just outside, a calash in readiness

B., 7: "Awaited with a carriage (*calesse*) and two horses." P., 211, and RB., II, 945; III, 1087.

193—RB., V, 1028-9:

To gate San Spirito, which o'erlooks the road,
Leads to Perugia,

Caponsacchi says (B., 74): "Turned along outside of the city wall to go to the gate of San Spirito, which is in the direction of Perugia." Cf. B., 7, and RB., VI, 1146-7; II, 956.

194—RB., III, 1128-30:

And so we did fly rapidly all night,
All day, all night * * *
And then another day,

Both Pompilia and Caponsacchi (B., 72 and 74) speak of their flight as uninterrupted save for the necessary stops for eating and changing horses. Browning uses this statement (RB., VI, 1211-2):

"Does it detain to eat?"
They stay perforce, change horses,

The flight lasted from 1 a. m. April 29 to 7 p. m. April 30, a journey of 70 miles in 42 hours, including these stops. Cf. RB., III, 828; V, 1044-5; VI, 1153; IX, 720, 1281.

195—RB., VI, 1275:

When we stopped at Foligno it was dark.

Guido makes the unfounded charge (B., 107) that the fugitives slept together at Foligno. Cf. RB., VI, 1455-6; II, 959.

196—RB., II, 893:

And teeth one mud-paste made of poppy-milk;

Baldeschi says (B., 108) that Guido had told him that Pompilia had mixed an opiate with the wine for dinner to put to sleep himself and all the rest. The fact is also mentioned or discussed (B., 10, 22, 93, 119, 146, 198). Browning refers to it (RB., II, 905; III, 1204-8; IV, 1176-7; V, 989-91, 1038). Cf. also the next note.

197—RB., IX, 625-35:

And do him service with the potent drug

Apology is made (B., 146 and 199) for Pompilia's use of the sleeping potion on the ground that it was a necessary precaution for her flight under fear of death. Browning substitutes for this sophistry the above grotesque subterfuge on the Fisc's lips.

198—RB., II, 894-5:

"His scritoire the worse for a rummage." At B., 72, Pompilia speaks of having taken some money from "*un Scrigno.*" Cf. B., 119; RB., IV, 1178; V, 993.

199—RB., III, 1073-4:

clothes and a trinket or two,
Belongings of her own in the old day,—

Pompilia (B., 72): "I took some little things of my own, a little box with many trifles inside, and some money, I know not how much there was. These were my own * * * " Cf. B., 75.

200—RB., V, 992:

* * * rifled vesture-chest,

RB., II, 895-6:

jewelry that was, was not,
Some money there had made itself wings too,—

These charges of serious theft were insisted upon by Guido's lawyers: B., 10, 86, 108, 119, and P., 211. At B., 7 and 8, Guido gives a preposterously long list of clothing, jewelry, and money carried away by Pompilia. As a matter of fact the 47 or 48 scudi found on Pompilia at the time of her arrest were later paid back to Abate Franceschini (B., 176, 211). Bottini (RB., IX, 653-8) makes an ironic excuse for this theft.

201—RB., VI, 2043-9:

There are two tales to suit the separate courts,
* * * —he tells you here, we fled
* * * * * * but elsewhere
He likes best we should break in, steal, bear off,

Guido's charge against his wife and Caponsacchi before the Roman Courts was flight from home and adultery: while (B., 7-9) the copy of the proceedings in the Tuscan Court, would indicate that in the latter, the theft was much insisted on. Cf. RB., V, 1906-8.

202—RB., II, 954:

Got horse, was fairly started in pursuit

B., 10, "the wretched husband pursued them." Cf. RB., III, 1209; IV, 1118; V, 1039; and B., 50, 119; and C., 221.

203—RB., VI, 1838-9:

In our whole journey did we stop an hour,
Diverge a foot from straight road

Bottini makes this point (B., lxxii or 61, § *Eaque ulterius*). Cf. B., 179, 196.

204—RB., VIII, 212-3:

I had thought to own—
Provided with a simple travelling-sword,

Such is Arcangeli's claim (B., 96), and it is refuted by Bottini (B., 150).

205—RB., VI, 1694:

"Borsi, called Venerino." At B., 7, the driver is named in the criminal charge against him in Arezzo as "*Francesco di Gio. Borsi d. Venerino, Garzone d'Agosto.*" At B., 62, he is called "*Franciscus Joannes de Rubris.*" Cf. B., 74, and RB., IX, 686.

206—RB., VI, 1696:

Deposes to your kissings in the coach,

This charge against the fugitive couple is made (B., 11, 94, 107, 119) and denied (B., 62, 63, 147, 179, 199, and P., 211). The Casanatense pamphlet (C., 221) gives a slightly fuller account.

207—RB., VI, 1698:

After some weeks of sharp imprisonment

RB., IX, 689:

After long rotting in imprisonment,

B., 199, gives this reason for his statement: "Influenced by the tedium of his secret prison, he had been compelled to swear so."

208—RB., VI, 1702-3:

"Was dismissed forthwith to liberty." That he was thus dismissed is seen at B., 8 and 9.

209—RB., IX, 698-701:

That what the owl-like eyes * * *
O' the driver, drowsed by driving night and day,
Supposed a vulgar interchange of lips,
This was but innocent jog of head 'gainst head,

This sophistry is first offered by Bottini (B., 147): "Furthermore, there is the possibility to be considered that the jostling together of those sitting in the carriage might have happened from the high speed; and from this fact an overcurious witness might believe that they were kissing each other." This explanation is repeated (B., 179, 199).

210—RB., VI, 1397-1401:

Suddenly I saw
The old tower, and the little white-walled clump
Of buildings and the cypress-tree or two,—
"Already Castelnuovo—Rome!" I cried,
"As good as Rome,"

RB., I, 507-8:

the wayside inn
By Castelnuovo's few mean hut-like homes

Castelnuovo, by the accident of Pompilia's failing strength, thus became the scene of one of the most striking incidents of this dark history. The arrival of the fugitives there is continually referred to (B., 72, 74, 119, 174). The version of Book II, 966-7, is more particularly based on the statement (P., 211): "At Castelnuovo in the Osteria of the Post." The other descriptions were made by the Poet "with his eye on the object," and are accurate.

211—RB., II, 972:

There did they halt at early evening,

Caponsacchi (B., 75) says: "We reached Castelnuovo on Tuesday evening, the last of the said month of April." And B., 94, says that they arrived at about half-past seven in the evening. All other testimony in the Book, save that of Pompilia, agrees with this.

212—

Pompilia, however (B., 73), declares: "I verily arrived at Castelnuovo at the blush of dawn." Hence the Poet makes Pompilia say (RB., III, 1140): "In a red daybreak, when we reached an inn." To this evidently mistaken statement, Guido's lawyers make the marginal comment: "The lie concerning the advent at Castelnuovo." And this is used to break down the value of her testimony (B., 94). The lawyers on the other side meet this attack by subterfuge (B., 149, 200). The Poet invents his own explanation, which, while not corroborated at any point in the Book, is not refuted by the fact of the Book. This is, that Pompilia fainted away in the evening glow, and when rudely awakened in the glow of the next morning, she was ignorant of the lapse of the hours of night. Note that the Poet repeats this important point. Cf. RB., III, 1188-98, and VII, 1580-4.

213—RB., VI, 1410-12:

Out of the coach into the inn I bore
The motionless and breathless pure and pale
Pompilia,

This passage was probably suggested by the words of Caponsacchi (B., 75): "Then because Pompilia said that she was suffering some pain and that she did not have the courage to pursue the journey further without rest, she cast herself still clothed upon a bed in the chamber."

Cf. B., 199, and RB., IX, 741, where the mean and vicious nature of Bottini is made to reveal itself in speaking of the same fact. Cf. also RB., III, 1142-9; VII, 915-6.

214—RB., VI, 1418:

"Kept watch all night long." B., 148: "Brief stay in that room * * * should be attributed to his guardianship of Francesca Pompilia." Cf. B., 149, 174, 200: "*ad ipsius custodiam vigilante.*" Cf. also RB., IV, 960; VII, 1574.

215—RB., II, 1116:

The night at the inn—

RB., II, 981:

One couch in one room, and one room for both.

In spite of the denial by Pompilia (B., 73) there can be little doubt that the fugitive couple did spend the night together in a chamber at Castelnuovo. Caponsacchi makes his explanation of the matter (B., 75). Guido asserts that they slept together at Castelnuovo. The lawyers discuss the matter pro and con throughout the Book, usually speaking of it as the *condormitio* (B., 11, 62, 75, 94, 119, 141, 148, 149, 174, 180, 199). Cf. RB., X, 659-64.

216—RB., II, 979:

"Upstairs," etc. Probably suggested by Pompilia's reference to an upstairs chamber (B., 73).

217—RB., II, 999-1000:

flung the cassock far,
Doffed the priest, donned the perfect cavalier.

Caponsacchi's use of laic garb during the flight is referred to (B., 94 and 148, and RB., III, 1259-60; IV, 960, 1156; V, 1050-1; VI, 1120, 1465).

218—RB., IX, 735:

Pompilia needs must acquiesce and swoon,

Caponsacchi gives their reason for stopping thus so near their journey's end (B., 75): "Then because Francesca said that she was suffering some pain, and that she did not have the courage to pursue the journey further without rest." And Bottini (B., 149) says: "To refresh her strength, which had been exhausted by the swiftness of journey they had made." Cf. also B., 199, and RB., III, 1187-8, 1231-2; VI, 1408.

219—RB., II, 975-6:

Since in the court-yard stood the Canon's self
Urging the drowsy stable-grooms to haste

RB., VI, 1427-9:

I stood
I' the courtyard, roused the sleepy grooms. "Have out
* * * * * * *
Carriage and horse, give haste, take gold!" said I.

Cf. B., 149: "The Canon was keeping guard over her and preparing for the continuance of the journey; and so, when the husband arrived, he was attending to this by ordering that the carriage be made ready." And at B., 180, we read: "When Franceschini arrived at the said place he found Caponsacchi urging that the horses be harnessed for continuing the journey." Cf. B., 174, and RB., III, 1197-1201; V, 1052-62.

220—RB., III, 1262-5:

There was no prompt suppression of the man
As he said calmly "I have saved your wife
From death;"

RB., X, 696:

the steadfast eye and quiet word
O' the Canon of the Pieve!

The actual words of Caponsacchi at this meeting as reported (B., 196) have undoubtedly suggested these passages, and they are still convincing evidence of the sterling and manly honor of the real Caponsacchi: "I am a gallant man, and what I have done, I have done to free your wife from the peril of death." Cf. also B., 174; and RB., II, 1010; IV, 1159, 1192-3; V, 1119.

221—RB., II, 1008:

"A wicked-looking sword at side." The Procurator of the Poor (B., 96) implies that the fugitives were provided with fire-arms as well as other weapons, but Bottini (B., 151) claims that Caponsacchi had only a sword, while elsewhere (B., 175, 177) only "*un piccolo spadino*" is acknowledged. Cf. also B., 119; and RB., III, 1260; IV, 1156; VI, 1122, 1466; VIII, 201-15.

222—RB., II, 1021:

So, Guido called, in aid and witness both,

Both the Book and *The Ring and the Book* refer repeatedly to the failure of Guido to take summary vengeance here and to his turning to the law to avenge himself. Guido gives his own defense (B., 107). But his lawyers have hard task to meet the sneers of the Prosecution at this failure of spirit. Cf. RB., II, 1506-24; III, 1268-70; IV, 1120-1212; V, 1068-1117; VI, 1461-71; VIII, 983-95, 1185-7; IX, 1133; X, 697-8; and B., 15, 51, 53, 65, 96, 109, 119, 151, 160, 162, 175, 177.

223—RB., IV, 1126-9:

And never let him * * * plead, * * * honour's wound!

Exactly this point is made by Bottini in his argument against Guido (B., 151).

224—RB., VI, 1511-2:

Detect
Guilt on her face when it meets mine, then judge

Possibly suggested by the rhetorical question (B., 174): "When his wife saw him, did she, timid as she was, shrink back?"

225—RB., II, 1022:

"The Public Force." The police who overtook Guido the night after the murder are called *La Forza* (P., 212). Cf. RB., IV, 1395; VI, 1463.

226—RB., II, 1022:

"The Commissary." The Governor of Arezzo is called *Il Commissario* (B., 42), but P., 211, speaks of "*il Governatore di quel luogo*"; B., 75 and 119, speak of "*la Corte.*" Cf. also RB., VI, 1462, and B., 51, 175.

227—RB., II, 1031:

Sprang to her husband's side, caught at the sword

RB., V, 1123-4:

Nay, an alacrity to put to proof
At my own throat my own sword,

RB., VI, 1544-6:

She sprang at the sword that hung beside him, seized,
Drew, brandished it, the sunrise burned for joy
O' the blade,

This incident, which is perhaps the most dramatic of the whole story, is interpreted in various ways in the Book. We read (B., 16): "Whether because of her hatred for her husband, or on account of her anger at the imprisonment of her lover, she drew a sword against her husband in the very presence of the officers who were about to arrest her. And to prevent her from going further, one of the bystanders had to snatch it from her hands." Cf. also B., 96, 110, 119, 150.

Browning's interpretations through the various speakers of the Poem are full of interest—the fierce admiration of Caponsacchi, the grave and earnest approval of the Pope, Pompilia's own linking of the act to her half-conscious mother-sense and to the voice of God, and the Fisc's insincere sophistries should be carefully compared. We have here a good example of Browning's art in adapting one of the acknowledged facts of the story to the various personalities of his speakers. Cf. RB., III, 1161-7, 1290; VII, 1594-1641; IX, 889-925; X, 699-700, 1081-3.

228—RB., II, 1040:

but her tongue continued free:

RB., V, 1120:

She, with a volubility of curse,

RB., VII, 1591-2:

I did for once see right, do right, give tongue
The adequate protest:

The Poet invents words for the situation at RB., III, 1295-9; and VI, 1528-32. At P., 211, we read: "The young woman was not at all terrified at the sight of her husband, but on the contrary she mustered her courage and reproved him for all the cruelties practiced upon her." Cf. B., 174, 175.

229—RB., II, 1044:

"The *sbirri.*" Cf. B., 119: "*catturate da i suoi sbirri.*" B., 177: "*farli arrestare da sbirri.*"

230—RB., V, 1133:

We searched the chamber where they passed the night,

RB., VI, 1555-9:

I begin my search meanwhile

Probably based on Caponsacchi's words (B., 75): "Although in the prison of Castelnuovo, where I was placed, diligent search was made both by the authorities and the husband," etc. Cf. RB., II, 1068-9.

231—RB., II, 1071-4:

Found— * * *
All the love-letters

RB., VI, 1668-9:

the documents were found
At the inn on your departure?

Cf. also III, 1308-11; IV, 1033-42; V, 1132-7, 1874-7. In the Book these letters are variously asserted to have been found in the closet, "*in Latrina*" (B., 61, 197) and in the prison (B., 76, 88, 143).

232—RB., VI, 1650-4:

Then your clerk produced
Papers,

RB., VII, 175-9:

Nay, I heard read out in the public Court
Before the judge, in presence of my friends,
Letters

These love-letters were presented as evidence in the adultery trial, *Processus fugæ,* and were reintroduced now in the murder trial and were published in extracts in the summary of evidence for the defense (B., 77-83). They play a very important part in the legal arguments, as will be seen by the following citations (B., 11, 61, 88, 89, 119, 168, 174, 177, 178, 197, and P., 211). The internal evidence against the genuineness of these letters is overwhelming. It is quite inconceivable that their highly conventionalized, pseudo-literary affectation could have been written by an illiterate young girl.

233—RB., II, 1145-7:

Tis forgery * * * the husband's work.

Very naturally and justifiably do the lawyers for the Fisc charge them to the forgery of Franceschini himself. (B., 197): "They might have been framed by the husband." They seem to be a part of his whole cunning, ignoble plot against his wife. Browning has repeated this charge of forgery over and over again (RB., III, 949-52, 1313, 1360-61; IV, 1047-59; V, 1151, 1203-6; VI, 1665, 1801-2; IX, 468, 1150; X, 650).

234—

In the trial for adultery, *Processus fugæ,* both Pompilia and Caponsacchi were questioned as regards these letters, and their replies are found at B., 72, 76.

235—RB., II, 1133-8:

Seeing I have no hand, nor write at all.
* * * * * * *
* * * she read no more than wrote,

Guido's lawyers brand these statements as lies, and endeavor to prove that she did know how to write (B., 87, 120). Cf. also RB., III, 908-11; VII, 1489-90; IX, 837; and Note 248.

236—

Guido's account of the contents of the love-letters (RB., V, 1141-9) is evidently given by the Poet in close accord with the letters set forth in the evidence, as will be seen by the subsequent notes.

237—RB., V, 1142:

He's at the villa, now he's back again:

Cf. B., 78: "The Jealous one is away"; and B., 80: "Guido returns Saturday morning."

238—RB., V, 1146-9:

"Of all things, find what wine." This is not an exact quotation from any of the letters, but they contain similar passages concerning the dropping of the sleeping potion into the wine (B., 81, 82).

239—RB., V, 1147:

"Sir Jealousy." *Il Geloso* is frequently referred to in the letters (B., 77, 78, 81, 82).

240—RB., V, 1148:

"Red wine." Cf. B., 78, "*vino rosso*" and B., 81, "*è rosso per hora.*"

241—RB., V, 1148-9:

Because a sleeping-potion, dust
Dropped into white, discolours wine

Cf. B., 93: "For in seeking an opportunity to mingle an opiate * * * was inquiring what colored wine they were drinking in the home, lest the color of it, when altered by the drug mixed therewith, might betray their plots."

242—

On the replies of Caponsacchi as to the letters (B., 75-6) the Poet has based his conception of Caponsacchi's reply (RB., VI, 1650-73).

243—RB., VI, 1655-9:

—How was it that a wife, young, innocent,
* * * wrote this page?—
She wrote it when the Holy Father wrote
The bestiality that posts thro' Rome
Put in her mouth by Pasquin.

The question and reply here are suggested by (B., 76): "I marvel that the Fisc pretends that before the flight several other love-letters had been sent me by Signora Francesca; for she was a modest young woman and such actions would be out of keeping with her station and her birth. And, therefore, I declare the abovesaid pretense is false and without foundation." On the above passage was also based RB., II, 1162-4:

Much he repents him if * * *
He coupled her with the first flimsy word

244—RB., VI, 1661-5:

"There's your hand!"
This precious piece of verse, I really judge,
Is meant to copy my own character,
A clumsy mimic; and this other prose,
Not so much even;

These words are evidently suggested by Caponsacchi's reply concerning the letters submitted to him for identification (B., 76): "This letter was not written by me, though the handwriting (*carattere*) of the same has some resemblance to my own. * * * This other letter * * * was not at all written by me and is not in my handwriting. Furthermore it has not the slightest resemblance to my handwriting." Cf. RB., II, 1131; III, 1312-3.

245—RB., II, 1148-9:

he confesses, the ingenuous friend,
That certain missives, letters of a sort,

Caponsacchi makes such acknowledgment in his affidavit (B., 75). Cf. RB., III, 927-30; IV, 1050-2.

246—RB., II, 1159-60:

he flung,
Her letters for the flame

RB., IV, 1053:

I burnt because I read.

Probably suggested by Caponsacchi's reply (B., 75): "The letters sent to me, as above, by the said Francesca, were burned by me in Arezzo." There is a similar statement in one of the forged love-letters (B., 79): "I gave them to the flames." Cf. RB., II, 1140; III, 960.

247—RB., IX, 445-8:

"Or the letters * * * Allow them hers." Bottini (B., 61) makes just such an acknowledgment, and then offers excuse: "or she could have made pretense of this to win over the Canon." Cf. B., 145, 146, 148, 178, 197. Cf. lines 473-4.

248—RB., IX, 448-9, 60:

—for though she could not write,
In early days of Eve-like innocence
* * * * * * * *
May well have learned, though late, to play the scribe:

B., 143: "She could have acquired this skill afterwards because of desperation which sharpened her wits." Cf. Note 235.

249—RB., IX, 461-3:

You thought my letters could be none of mine,
* * * * * * * *
But now I have the skill, and write, you see!

B., 127: "I sent you word of them on purpose, but you did not believe the letters sent you were in my own hand. I declare that I finished learning how to write in Arezzo."

250—RB., IX, 476-7:

" my life,
Not an hour's purchase," as the letter runs,—

The words are adopted from Pompilia's real letter (B., 127): "My life was not worth an hour"—(*la mia vita era a hore*).

251—RB., III, 957:

There never reached her eye a word from him:

Cf. Pompilia's words (B., 72): "The said Caponsacchi before the said affair did not send me any letter, because I do not know how to read manuscript," etc.

252—RB., IX, 538-45:

To such permitted motive, then, refer
All those professions, else were hard explain,
Of hope, fear, jealousy, and the rest of love!

This excuse for the ardent tone and expression of the love-letters is made by Bottini (B., 146).

253—RB., II, 1135:

What if the friend did pen now verse now prose,

RB., VI, 1662:

This precious piece of verse,

There is no verse in the letters as given in the Book, but the letters which were supposed to have been written by Pompilia speak of certain verses, "*ottave*" (B., 78, 79, 80), and Bottini speaks of "*inhonesta carmina*" (B., 145). Cf. also RB., V, 1140, 1365; and VII, 1152.

254—RB., VI, 1585-7:

they bore me off,
They bore her off, to separate cells o' the same
Ignoble prison, and, separate, thence to Rome.

The fugitive couple were evidently carried first to a prison in Castelnuovo, from which Pompilia's appealing letter to Pietro was written two days later, May 3 (B., 127). But Pompilia's affidavit is dated Rome, May 13 (B., 45).

255—RB., III, 1325:

The captured parties were conveyed to Rome;

B., 175: "They were conducted as prisoners to the Prisons of the Most Illustrious Governor of

Rome." P., 211: "They were taken to Rome and placed in the New Prisons." Cf. RB., II, 1060, 1083; IV, 1121; V, 1175-6; VI, 1587-91.

256—RB., III, 1329-33:

Guido kept out of sight and safe at home:
The Abate, brother Paolo, helped most
* * * * * * *
* * * pleaded, Guido's representative

At B., 120, we read: "Guido returned to his own country, leaving the conducting of the affair to the Abate, his brother." And P., 211: "To go back to his own country, leaving the care of his case in the hands of his brother, the Abate." Cf. RB., II, 1297-1300; IV, 1303-4.

257—RB., II, 1239-59:

The various accounts of the sneers of contempt which Guido had to bear after his return home seem to give a half-savage ironic delight to the Poet. Cf. RB., II, 625-6; III, 1445-62; IV, 1493; V, 1242-77. To these the Pope adds the final comment of matured spiritual wisdom (RB., X, 710-4):

The furnace-coals alike of public scorn,
Private remorse, heaped glowing on his head,
What if,—the force and guile, the ore's alloy,
Eliminate, his baser soul refined—
The lost be saved even yet, so as by fire?

All of these find foundation in the Book (B., 11): "He was pointed out with the finger of scorn, especially in his own country"; and (B., 16): "he was shut out of the noble company"; and a fuller account of this is found at B., 172. That Abate Paolo came in for his share of scorn may be seen in Note 305.

258—

The enumeration and description of the three suits (RB., IV, 1305-27) follows with considerable closeness the account at B., 169.

259—RB., IV, 1305:

managed the three suits

RB., VIII, 1379:

Three pending suits

Cf. B., 169: "three lawsuits pending." Cf. also RB., III, 1670; IV, 1332; V, 1343, 1442.

260—RB., IV, 1308-10:

First civil suit,—the one the parents brought,
Impugning the legitimacy of his wife,
Affirming thence the nullity of her rights:

Cf. (B., 169): "One as to the legitimacy of the parentage of his wife and the nullification of the dowry agreement." Cf. also B., 10, 50, 118, 144, 172, 194; and RB., II, 600, 726-32; III, 646-51.

261—RB., III, 655:

"And still six witnesses." B., 172: "Conclusive proof was given by six witnesses." Pietro in his will speaks of them (B., 128) as persons worthy of credit.

262—RB., IV, 1311-4:

This was before the Rota,—Molinès,
That's judge there, made that notable decree
Which partly leaned to Guido, as I said,—
But Pietro had appealed against the same

Cf. (B., 169): "Brought by Pietro in the Tribunal of the Sacred Rota." This case was originally tried before Auditor Tommati (B., 10, 27, 118, 172; and P., 210), but after his decision (cf. following note), which was partly in favor of Guido, the case was transferred on Pietro's appeal (cf. following note) to the Rota" (B., 172). "Nevertheless, an appeal was taken from that sentence and it was committed to the Sacred Rota before Monsignor Molines." Cf. RB., V, 777-8. "Beside the Tribunal of the Sacred Rota, there exists in the Roman Curia another tribunal which is called the Tribunal of the Signature of Justice. It is a High Court, and a tribunal of last instance, or ultimate appeal." Humphrey, *Urbs et Orbis*, p. 285.

263—RB., II, 742-4:

They would not take away the dowry now
Wrongfully given at first, nor bar at all
Succession to the aforesaid usufruct,

This decision is described (B., 118): "He obtained for Francesca Pompilia a continuance in quasi-possession of her daughtership"; and B., 172, "continuing to Francesca Pompilia quasi-possession of her parenthood." Cf. also B., 27, 50; P., 210; and RB., III, 670-80; IV, 1313.

264—RB., II, 753:

Whence, on the Comparini's part, appeal—

B., 118: "But Pietro appealed from the decree." Cf. also B., 50, 172; P., 210; and RB., III, 681.

265—RB., II, 755:

And so the matter stands, even to this hour,

RB., III, 688:

And so the matter pends, to this same day.

B., 172: "Where it still hangs undecided." Cf. also B., 51; P. 210; and RB., IV, 24-8.

266—RB., IV, 1317-8:

Next civil suit,—demand on the wife's part
Of separation from the husband's bed

RB., II, 1287:

Pompilia sought divorce from bed and board

B., 169: "The second suit was for divorce from bed," etc., and B., 177, "and at instance of the said Francesca before the Vice-Governor of suit for separation from bed," etc. Cf. also B., 51, 100, 114, 154; and RB., III, 1427-38; V, 1247, 1319-21.

267—RB., IV, 1320:

Claims restitution of the dowry paid,

B., 177: "And the recovery of the dowry which had been spent." Cf. RB., III, 1436.

268—RB., IV, 1322:

"The Vicegerent has to judge." Cf. B., 169 and 177, "before *Monsignor* the Vice-Governor (*Vicegerente*)."

269—RB., IV, 1323-5:

Third and last suit,—this time, a criminal one,—
Guido's complaint of guilt against his wife

B., 169: "The third is a criminal suit as to the pretended adultery, still pending in the tribunal of His Excellency, the Governor." This trial, which is so frequently referred to in the Book as the *Processus fugæ*, was the criminal

case brought against Pompilia and Caponsacchi at Guido's demand, on the charge of running away together and adultery. It covered the time from May 13, 1697, the date of Pompilia's deposition (B., 45) till September 24, the date of the judgment against Caponsacchi (B., 83). In this case Caponsacchi and Pompilia were prosecuted by the Fisc and defended by the *Procurator Pauperum*. The evidence and argument of this former case are continually referred to in the Book. Much of the printed evidence of the summaries in the Book, including the affidavits of Pompilia and Caponsacchi, had thus been a part of the adultery trial, for Guido's lawyers do all they can to fix the charge of adultery in the wife, as giving excuse for the murder. Cf. RB., IV, 1213-4.

270—RB., IV, 1326-7:

> In the Tribunal of the Governor,
> Venturini, also judge of the present cause.

B., 169: "In the Tribunal of his Excellency, the Governor," and B., 22: "in this very tribunal, and by his Honor, Lord Venturini, judge in this present case." Cf. B., 51, 119, 120, 175, 176, 200; and RB., III, 1334; V, 1165.

271—RB., V, 1218-22:

> We, for complicity in Pompilia's flight
> And deviation, and carnal intercourse
> With the same, do set aside and relegate
> The Canon Caponsacchi for three years
> At Civita

Note that this is a close paraphrase of the actual wording of the decree of Court against Caponsacchi (B., xcix and 83). Browning has taken the words "complicity," "deviation," and "carnal" from his original. This punishment of Caponsacchi is continually referred to in both Poem and Book. Cf. B., 10, 22, 51, 57, 106, 131, 168, 175, 185, 195, 200; P., 211; and RB., I, 1038-9; II, 1177-87; III, 1409-13; IV, 1245-9; VI, 1746; IX, 1518-21.

272—RB., III, 1409-10:

> unshent, unshamed,
> Unpunished as for perpetrating crime,

The lightness of the above sentence in view of the seriousness of the crime charged is much discussed in the Book. The prosecutors of Guido continually assert that this was because of lack of proof of the adultery (B., 51, 57, 106, 131, 138, 140, 142, 185; and P., 211). But Spreti (B., 106) claims it was because Caponsacchi was a foreigner. Cf. RB., V, 1899.

273—RB., VI, 2013:

"*Probationis ob defectum.*" (B., 51, 131): "*ob defectum probationis.*"

274—RB., VI, 2017-22:

> If the title ran
> For more than fault imputed and not proved,
> That was a simple penman's error,

When insistence on the above decree was made by Guido's lawyers in attempting to prove adultery, the above retort was given by the Fisc (B., 138) and repeated by the second Anonymous Author (B., 180), and denied by Spreti (B., 106). Cf. RB., IX, 1527-38.

275—RB., IX, 1545-55:

> I traverse Rome, feel thirsty, need a draught,
> Look for a wine-shop, find it by the bough
> Projecting as to say "Here wine is sold!"
> * * * but what sort of wine?
> * * * * * * *
> That much must I discover by myself.
> * * * * * * *
> Exactly so, Law hangs her title forth,

This figure of speech regarding the wine-bush is borrowed directly from the second Anonymous Writer (B., 180): "And if one will only give it due thought, the title of that case was placed there, just as a wine-bush hangs outside the door of an inn, which very well shows that they sell wine there, but does not prove whether what they sell is good and salable and agreeable. Oh! by no means. For one may find the wine there to be sharp and muddy, and of other inferior qualities."

276—RB., IV, 1241-3:

> For the wife,—let her betake herself, for rest,
> After her run, to a House of Convertites—
> Keep there, as good as real imprisonment:

B., 175, gives us the following account of the manner in which the case against Pompilia ended: "The case was left undecided as regards the wife, who was placed in the nunnery of the Scalette as a prison." (Cf. B., 121, 181; and P., 211.) This was not a punishment, but merely a continuance of the accused in custody. The *Conservatorio di S. Croce della Penitenza alla Longara* was an institution for penitent women, founded in 1615 on Via della Longara. It is also called *delle Scalette* because of two small staircases leading to the monastery and adjoining the church. It is sometimes spoken of as *del Buon Pastore*. (Moroni, *Dizionario di erudizione*, etc., vol. 17, p. 20.) Browning mistakenly identifies the Scalette with the Monastery of St. Mary Magdalene of the Convertites in the Corso. It was the latter institution which brought suit to win Pompilia's property (Note 364). (Cf. B., 202.) This act of the Court as to Pompilia is also referred to at B., 10, 51, 97, 121, 126, 175, 181; P., 211; and RB., II, 1197-9; III, 1405-6, 1491; V, 1223-5, 1917-8; VII, 1649-53; VIII, 1064; IX, 1195-1202; X, 706-7.

277—RB., II, 1198, and IV, 1242:

"The Convertites." Browning merely anglicizes the word *Convertitæ* found at B., 126, 202, and elsewhere.

278—RB., II, 1231:

"In Via Lungara." This place of Pompilia's detention is spoken of at P., 211, as "the monastery of the Scalette on the Lungara."

279—RB., III, 1492-4:

> for Guido's sake
> Solely, what pride might call imprisonment
> And quote a something gained, to friends at home,—

This is the explanation of the sentence against Pompilia as given by the second Italian Pamphleteer (B., 175): "Giving some satisfaction to the Franceschini brothers in their strong insistence than because of the obligations of justice." Cf. RB., VI, 2016.

280—RB., IV, 1331-7:

> For, Paolo, knowing the right way at Rome,
> Had, even while superintending these three suits
> * * * * * * *
> Ingeniously made interest with the Pope

RB., VIII, 1398-1408:

> That we prayed Pope *Majestas'* very self
> * * * * * * *
> Grant there assemble in our own behoof
> A Congregation, a particular Court,
> * * * * * * *
> To hear the several matters in dispute.—
> Causes big, little and indifferent,
> Bred of our marriage

Abate Paolo, harassed by the burden of his lawsuits, had evidently tried to use the influence of patrons to help him secure a declaration in his favor (B., 121): "The Abate, seeing the cause unduly protracted, had just grounds for placing it at the feet of Our Lord [the Pope] with a memorial in which he declared that he could no longer endure such important and such various litigation and vexation arising from that luckless marriage, and he prayed that a special sitting (*Congregatio*) be appointed for all the cases—that is, the ones concerning her daughtership, her flight, her adultery, her dowry, and others growing out of the marriage." For the interpretation of this act by the other side, see B., 175, 178, 183. Cf. RB., III, 1331-2, 1469-74, 1671; V, 1347-51, 1752-5.

281—RB., VIII, 1425-6:

> Returned us our petition with the word
> "*Ad judices suos*," "Leave him to his Judge!"

The Pope evidently refused to interfere with the action of the courts and replied (B., 121): "The matter rests with the judges." Cf. B., 175, 183; and RB., V, 1760.

282—RB., III, 1495:

> This naturally was at Guido's charge:

There seems to have been some dispute between the Comparini and the Franceschini as to which of the two should pay Pompilia's expenses while thus shut up in the Scalette (B., 51). The expense was finally met from money taken from Caponsacchi at the time of his arrest at Castelnuovo (B., 125, 176).

283—RB., III, 1500-6:

> The convent's self makes application bland
> That, since Pompilia's health is fast o' the wane,
> She may have leave to go

The Anonymous Author (B., 121) states the matter as follows: "The nuns did not wish for her confinement to take place within their walls and therefore a pretext was found for removing her on the grounds of the said obstruction, and the necessity of removing it." Cf. RB., II, 1325-38; V, 1327, 1470-5; B., 10, 97, 165, 175, 181, 185; and P., 211; while B., 51, gives the disagreement as to bearing Pompilia's expenses as the reason.

284—

On October 12, 1697, Pompilia, for the reason given in the above note, was transferred to the home of the Comparini, which was to be strictly kept as a prison, under a bond of 300 scudi. (Cf. the decree as given in B., clv.) The fact is continually referred to in Book and Poem. Cf. B., 10, 16, 51, 57, 61, 97, 121, 175, 181, 184, 185; P., 211; and RB., III, 1500-14; IV, 1350-1, 1518-9; V, 1328, 1473-6; VII, 318; IX, 1213-26.

285—RB., II, 1323:

"After full three long weeks." In thus counting the length of the imprisonment of Pompilia, *Half Rome* evidently counts from September 24, the date of the condemnation of Caponsacchi (B., xcix or 83) which, however, is not necessarily identical with the time of Pompilia's transfer from the prison to the Convent, to October 12, the date of the transfer to the home of the Comparini (B., 127). But RB., III, 1490, speaks of five months in the Convent, based partly on the "*alcuni mesi*" of B., 121, and partly on the thought that Pompilia had been in the Convent practically since she had been brought to Rome as prisoner early in May. RB., IX, 1227, speaks of six weeks, for which there is no basis.

286—

"*Domus pro carcere.*" This technical designation of the home of the Comparini is found in the decree of transfer (B., 127) and is often repeated throughout the Book. Cf. RB., II, 1342; III, 1514; VIII, 1264; IX, 1225.

On this fact was based one of the aggravating circumstances of the murder; namely, that in the slaughter of persons under custody the authority of the State was treasonably insulted. Cf. Note 420.

287—RB., III, 1509-11:

> Oh, and shift the care
> You shift the cost, too; Pietro pays in turn,
> And lightens Guido of a load!

At B., 139, 176; and P., 211, we find that Pietro Comparini now definitely relieved the Franceschini from longer bearing the expense of Pompilia's maintenance, over which the two parties had formerly quarreled (B., 51). Cf. C., 221.

288—RB., III, 1519:

> He authorized the transfer, saw it made

This reference to Abate Paolo is repeated at RB., VIII, 1266-7, and elsewhere in the Book (B., 16, 51, 55, 97, 125, 139, 152, 157, 165, 176, 181; and P., 211).

289—RB., V, 1329-30:

> No-parents, when that cheats and plunders you,
> But parentage again confessed in full,
> When such confession pricks and plagues you more—

RB., II, 1350-4:

> Theirs who renounced all part and lot in her
> So long as Guido could be robbed thereby,

The Book presents such shuffling with the fact of their parentage at B., 17, 126.

290—RB., III, 1520:

"Two months after" Pompilia was transferred to the Comparini home, October 12 (Note 285), and gave birth to her child December 18 (Note 299).

291—RB., VIII, 1267-8:

> did we make such grant,
> Meaning a lure?

This very point is made by Arcangeli (B., 17): "Since Guido could make that pretense to gain the opportunity of killing her," etc. Cf. Note 502.

292—RB., V, 1335-7:

> But a certain villa smothered up in vines
> At the town's edge by the gate i' the Pauline Way,
> Out of eye-reach, out of ear-shot, little and lone,

This home of the Comparini, in which Pompilia spent the last two months of her life, was probably situated on Strada Paolina in the heart of the City. B., 127, speaks of the Comparini home as on Via Paolina, but the record of the death of Pompilia in the register of San Lorenzo in Lucina (cf. Note 24) gives her home in Strada Paolina. This is also much more in accord with the exhibition of the corpses in the particular church, the parish Church of San Lorenzo. But Browning uniformly locates the home on the Via Paolina, outside the City walls in the Pauline district. I see no valid artistic reason for such a change; it was probably a misunderstanding of the fact. Cf. RB., I, 604-5; II, 206-7, 476, 1361-6; III, 1507, 1596; IV, 1369; VII, 218; XI, 1277.

293—RB., II, 1368-9:

> where perchance
> Some muffled Caponsacchi might repair,

The utterly unsubstantiated charge that Caponsacchi had clandestinely visited the Comparini home after the decree of banishment against him is first made in the rhetorical question of Arcangeli (B., 19): "And I wish I could say that her love affairs with the banished one were not continued." Cf. also B., 55, 122, 181; and RB., III, 1607-14; V, 1338-41; IX, 1246-60.

294—RB., IV, 1509-17:

> There was a sentence passed at the same time
> By Arezzo and confirmed by the Granduke,
> * * * * * * *
> —Condemns the wife to the opprobrious doom
> Of all whom law just lets escape from death.
> * * * * * * *
> The Stinche, House of Punishment, for life,—

The fact of this condemnation of Pompilia in the Tuscan Courts is given in the written transcript of the report of the trial at Arezzo (B., v-viii). At B., 8: "The second Accused (Pompilia) is condemned to the penalty of Stinche for life." Cf. RB., V, 1903-13; VI, 2056-8; XI, 1663-9; XII, 719-23. But the Pope's words regarding it are perhaps very near to the feeling of the Poet in the matter (RB., X, 834-40):

> that strange shameful judgment, that
> Satire upon a sentence.

295—RB., VI, 2037-8:

> With Guillichini; he's condemned of course
> To the galleys,

Guillichini, who was made a party to the above Tuscan criminal trial, was likewise condemned (B., 8) "to the galleys * * * for five years." Cf. Note 146 and RB., XI, 1666-7.

296—RB., XI, 1665:

> One week before I acted on its hint,—

RB., VI, 2040:

> A fortnight since

B., 9, gives the date of this sentence as December 24, 1697. Guido is supposed to have started for Rome immediately thereafter.

297—RB., II, 1282-5:

> And institute procedure in the courts
> * * * * * *
> He claimed * * * divorce

There is no evidence that Guido actually brought a divorce suit, although he evidently sought counsel on his right to such divorce, as he stated in RB., V, 1809-12:

> I wished the thing invalid, went to you
> Only some months since, set you duly forth
> My wrong and prayed your remedy, that a cheat
> Should not have force to cheat my whole life long.

For at B., 118, we read: "But the Franceschini were able to restrain themselves from due resentment in the hope that if Francesca Pompilia were not the daughter of Pietro and Violante, as was supposed at the time of the espousal, the marriage might be annulled and they might thus purge themselves of such a blot on their reputation. Witnesses of this feeling are found in the many authorities and experts who were requested by the Franceschini to give thought to that point and express their opinion of it. But as these did not agree, the Franceschini were unwilling to commit themselves to so doubtful an undertaking," etc. Cf. B., 120; and RB., III, 1480; V, 1247-51, 1295-1301.

298—RB., V, 1308-18:

> you err
> I' the person and the quality—nowise
> In the individual,—that's the case in point!

Such is the very point made (B., 98): "As long as he had any hope that he might have the marriage annulled because of the mistake concerning the person married. For he was ignorant of the point of Canon Law that error as to the nature of the person contracted does not render a marriage null, but only an error as to the individual."

299—RB., II, 1383:

> Gave birth, Sir, to a child, his son and heir,

B., 122: "During the month of December, Pompilia gave birth to a boy in the home of the Comparini." B., 151, gives December 18 as the date. Cf. also P., 211; and RB., IV, 1352; V, 1436-68; IX, 1309-10.

300—RB., V, 1469:

> Lawful,—'t is only eight months since your wife
> Left you,—

That is, from April 28 to December 18. Cf. RB., I, 792; VI, 35.

301—RB., V, 1470-1:

> your babe was born
> Last Wednesday in the villa,—

P., 211, says: "Which was Thursday," referring to January 2d, the date of the murder; but this was just two weeks later. Cf. Note 303.

302—RB., II, 1384:

"Caponsacchi's son." Arcangeli makes an implication of such a charge (B., 10): "Would that he had not been conceived in adultery!" Cf. RB., V, 1498, 1530-1; VIII, 370; IX, 1370.

It is well to note in this connection that both Pompilia and Bottini suggest immaculate conception, Pompilia at RB., VII, 1762-4, with devout

reverence for the story of the Mother of Christ, and the Fisc, RB., IX, 1341-66, suggests it with cynical irony. Cf. Note 22.

303—RB., I, 405:

The wife's two-weeks' babe,

This oft-repeated age of the child is correct to the day, December 18 to January 2. Cf. RB., I, 799; III, 31, 1605; VII, 14, 94, 133, 1681, 1686, 1755.

304—RB., III, 1540-1:

"I shall have quitted Rome ere you arrive
To take the one step left,"—wrote Paolo.

Abate Paolo's departure from Rome is spoken of (B., 26, 122; and P., 211); but (B., 177) we have the definite accusation: "He left Rome to take part in the planning of that notorious murder." Cf. RB., IV, 1356-7; X, 893-4.

305—RB., V, 1366-73:

Paul, finally, in such a state of things,
After a brief temptation to go jump
And join the fishes in the Tiber, drowns
Sorrow another and a wise way:
* * * * * * *
Leaves Rome,

Notice that this passage is a free, ironic paraphrase of (B., 122): "Until he felt very much inclined to throw himself into the river, as he indeed declared to all his friends. And to free himself from such imminent danger he decided to abandon Rome, the Court, his hopes and possessions, his affectionate and powerful patrons," etc. Cf. B., 182, and the fuller account C., 221, which tells that Abate Paolo lost his post as Secretary of the Knights of Malta in consequence of this disgrace.

306—RB., II, 1389-90:

Why, the overburdened mind
Broke down, what was brain became a blaze.

This account of the effect which the news of the birth of the child had upon Guido was evidently suggested by the magniloquent account of the Anonymous Author (B., 122) and repeated ironically by Browning, VIII, 601-11. Cf. B., 11: "Anger so impelled the luckless man to fury, and his indignation so drove him to desperation." Cf. also RB., IV, 1521-4; V, 1483, 1661-4.

307—RB., III, 1546-69:

By an heir's birth he was assured at once
O' the main prize, all the money in dispute:

This more sinister view of the effect of the news of the birth of the child upon the father is definitely asserted by Bottini (B., clxxxiv or 151) § *Dilatio pariter*. Cf. RB., IV, 1104-6; X, 752-74.

308—RB., IV, 1354:

First comes this thunderclap of a surprise:

Possibly suggested by "*Attonito allora il Franceschini*" (P., 211).

309—RB., V, 1478:

And he's already hidden away and safe

B., 129, speaks of the child having been hidden away with a nurse. Cf. also B., 19, 201, 203; C., 222; and RB., VII, 42, 48-9, 205-7.

310—RB., II, 1391-3:

(that first news
Fell on the Count among his vines, it seems,
Doing his farm work,)—why, he summoned steward.

Possibly suggested by (B., 107): "While we were staying at the said vineyard," or (B., 108): "In presence of the keeper of the vineyard" (*vignarolo*).

311—RB., XI, 1888-9:

Look at those four young precious olive-plants
Reared at Vittiano,—

B., 107: "The Santi above named was a laborer of mine at my Villa of Vittiano." This is the only point at which the name of the villa is given, though there is mention of the villa in the forged love-letters. Browning uses the name repeatedly (RB., III, 311, 1575; IV, 1360; V, 364, 1550-1; VI, 519, 591). That the negotiations between Guido and his hirelings took place at this villa is indicated by their sworn testimony (B., 107). The supposed reply of these laborers given by the Poet (RB., V, 1556-60) was evidently suggested by the words at B., 107. A fuller account of the hiring of these assassins is given in the Casanatense pamphlet (C., 222).

312—RB., II, 1394:

"Four hard hands." The names and homes of these four assassins are given at B., xxv, and again at B., lxii. Cf. RB., X, 777-8.

313—RB., V, 1566:

Took whatsoever weapon came to hand,

Probably meant as Guido's justification for the fact that he was bearing illegitimate arms. Cf. Note 413.

314—RB., V, 1567-8:

And out we flung and on we ran or reeled
Romeward. I have no memory of our way,

Possibly suggested by (B., x or 11): "*obcæcata mente iter arripuit.*"

315—

Biagio Agostinelli, who had no hand in the killing, but only stood guard at the outer door (B., 187, and P., 212), was exempted from the re-examination under the torture of the vigil (B., 105, 114). A fragment of his testimony is given (B., 108).

316—RB., IV, 1361:

Comes to terms with four peasants young and bold,

Some discussion is given in the Book to the question whether Guido had the right to hire assassins (B., 15, 26, 33). Browning has the Pope lay far more stress on this phase of the matter in his strong condemnatory words (RB., X, 931-63). Something of these negotiations are given by Guido and his associates in their testimony (B., 107-8). Cf. C., 222; also RB., IV, 1557; VIII, 1500-8.

317—RB., III, 1582-3:

And so arrived all five of them, at Rome
On Christmas-Eve,

P., 211: "On Christmas-eve reached Rome." The Poet repeats this fact with various interpreta-

tions at RB., IV, 1363; V, 1581-1610; VIII, 365-381, 1071; and closes with the Pope's protests against the desecration of the sacred season (RB., X, 788-90).

318—RB., III, 1584-5:

Installed i' the vacancy and solitude
Left them by Paolo,

P., 211: "He stopped at Ponte Milvio, where there was a villa of his brother, and there he remained in hiding with his followers until a time opportune for the execution of his designs should come." Browning refers to this delay of nine days at RB., IV, 1364-6; V, 1588-1610; VIII, 1073-90. The last is the sophistical interpretation of Arcangeli; but the second, which presents the cunning self-justification of Guido, is even more interesting.

319—RB., III, 1592-3:

"But, two, proceeded the same bell." The fact that the murder was committed on January 2d, is mentioned (B., 11, 50, 151; and P., 211). Cf. RB., I, 606, 795.

320—RB., IV, 1371:

"Tis one i' the evening." Browning here takes not merely the fact but the form of expression, an Italianism, from the Book (B., lxii), "*hora prima noctis,*" and P., 211: "*un' hora circa di notte.*"

321—RB., V, 1628-33:

I knocked, pronounced
The name, * * * Caponsacchi

This fact that Guido used the name of Caponsacchi and pretended he brought a letter from the Canon is often repeated and interpreted in the Book (B., 11, 19, 51, 99, 122, 153, 165, and P., 212). C., 222, gives a fuller account of this incident. Browning repeats the fact many times in the Poem, with various interesting comments by the speakers (RB., I, 395-8, 619-24; II, 1406-31; III, 1597-9; IV, 1371-2; VII, 59-60, 219). But most interesting of all is Pompilia's word, VII, 1808-14:

It was the name of him I sprang to meet
When came the knock, the summons and the end.

Browning spurns all apology for what might seem compromising; in fact he is too proudly confident of the purity of Pompilia, we might say defiantly confident.

322—RB., II, 1435:

And wiped its filthy four walls free at last

Possibly suggested by the rhetorical flourish of the Anonymous Writer (B., 123). To this there is a contemptuous retort (B., 181).

323—RB., III, 1620-1:

"Come in," bade poor Violante, * * *
* * * that death was the first,

P., 212: "He leaped upon Violante Comparini, who had opened it, and struck her dead to the ground." Cf. B., 10, 51, 99, 153; C., 222; and RB., IV, 1373-4, 1576; V, 1649-60.

324—RB., III, 1622-3:

Pietro * * *
Set up a cry—"Let me confess myself!"

P., 212: "Comparini * * * who * * * cried 'confession.'" Cf. RB., IV, 1377-9; XI, 471-4; and C., 222.

325—RB., IV, 1382:

Pompilia rushes here and there

P., 212: "Pompilia * * * extinguished the light, hoping thus to escape the assassins, and ran to the neighboring door of a locksmith, crying out for help. But when she saw that Franceschini was provided with a lantern, she went to hide under the bed," etc. Cf. also B., 51.

326—RB., VII, 38:

"Twenty-two dagger-wounds." P., 212: "She was barbarously slain with twenty-two wounds." C., 222, gives further details of the murder.

327—RB., IV, 1385:

He lifts her by the long dishevelled hair,

B., 182: "Taken her by the tresses and lifting her from the ground." Cf. C., 222.

328—RB., IV, 1390:

"On dead Pietro's knees," B., lix: "*testa su le gambe,*" and P., 212: "*trasse ai piedi di Comparini.*" Cf. line 1437.

329—RB., IV, 1435-6:

She bore the stabbing * * *
Without a useless cry,

RB., IX, 1421:

She, while he stabbed her, simulated death,

These are based on (B., 182): "Poor wife knew by natural instinct how to feign it by her relaxation." Cf. C., 222.

330—RB., IV, 1391:

"Let us away, my boys!" P., 212: "Let us lose no time, but return to the vineyard."

331—RB., III, 1627:

The noise o' the slaughter roused the neighbourhood.

P., 212: "When the uproar of this horrible slaughter was heard abroad people ran thither." Cf. RB., IV, 1393-4; and C., 222.

332—RB., II, 27:

But she took all her stabbings in the face,

P., 213, says this of Pompilia, not of Violante: "were so disfigured, and especially the wife of Franceschini by wounds in the face, that they were no longer recognizable." Cf. RB., II, 615-6.

333—RB., IV, 1395-6:

Soon followed the Public Force, pursuit began
Though Guido had the start and chose the road:

P., 212: "When the posse (*Forza*) arrived at the vineyard he found that they were no longer there, but about an hour ago they had left in the direction of the highway." Cf. B., 51.

334—RB., XI, 1623-4:

"But, drunk, redundantly triumphant." Possibly suggested by (B., 11): "His dull and unforeseeing mind suggested no way to find a place of safety." Cf. also B., 123; and RB., V, 1715-9.

335—RB., XI, 1633:

"Therefore, want horses in a hurry." Possibly suggested by (P., 212): "Franceschini had demanded horses with threat of violence."

336—RB., XI, 1641:

"I want hat on head." P., 212: "In his haste Franceschini * * * left his cap."

337—RB., III, 1628-30:

They had forgotten just the one thing more
* * * the ticket, to-wit
Which puts post-horses at a traveller's use:

P., 212: "Which (horses) were denied him, because he lacked the necessary order." Cf. B., 123; and RB., V, 1723-5; XI, 1645; and especially the interesting interpretation by the Pope (RB., X, 821-9), who sees in it the hand of God checking Guido in full career of sin.

338—RB., X, 861-3:

Thy comrades each and all were of one mind,
Thy murder done, to straightway murder thee
In turn, because of promised pay withheld.

P., 213: "They also revealed that they had planned to kill Franceschini himself afterwards, * * * because he had not kept his word to pay them as soon as they left Rome." The Poet sees here, with the eyes of the good old Pope (RB., X, 855-68), that it was God's outstretched hand that had saved Guido from a swift and unrepenting death. Compare with this the sophistical excuse for the fact (RB., VIII, 1589-1601) and Guido's vengeful hatred as aroused by this (RB., XI, 1739-53).

339—RB., III, 1631-4:

So, all on foot * * *
* * * gained Baccano very near,

P., 212: "Hence he had traveled afoot with his companions toward Baccano." C., 222, further states that Guido had desired to part from his fellows, but they would not permit him to do so. Cf. RB., X, 846-7.

340—RB., IV, 1397-8:

So, that same night was he, with the other four,
Overtaken near Baccano,

B., 51: "That same night, they were discovered in the tavern at Merluccia." Cf. P., 212; C., 223; and RB., V, 1670.

341—RB., V, 1674:

On a cloak i' the straw which promised shelter first,

B., 11: "Resting on a pallet (*stragulo*)." Cf. RB., III, 1635-6; IV, 1399-1403; X, 849; and C., 223.

342—RB., V, 1675:

"With the bloody arms beside me." B., 51: "With fire-arms and swords still bloody," and P., 212: "On them were found, still stained with blood, those daggers with which they had done the murder." Cf. RB., II, 1438; III, 1638; IV, 1402.

343—RB., V, 1874:

"Found them in flagrant fault." The expression "*in flagranti*" or "*in flagranti delicto*" is used several times in the Book (B., xii, etc.). Cf. RB., II, 385.

344—RB., IV, 1416-24:

Says Guido, "By your leave, I fain would ask
How you found out 'twas I who did the deed?"
* * * * * * *
"Why, naturally your wife!" Down Guido drops
O' the horse he rode,—they have to steady and stay,
At either side the brute that bore him,

Evidently suggested by (P., 212): "It is told that Franceschini, while making the journey, asked * * * how in the world the crime had been discovered; and when he was answered that his wife, whom they had found still living, had revealed it, he was so astounded by it that he was, as it were, deprived of his senses."

345—RB., II, 1464-5:

Laid by the heels i' the New Prison, I hear,
To bide their trial,

Browning refers to the New Prison as the place of Guido's incarceration (RB., I, 1284; V, 325, 332; XII, 139), though he has no definite authority for this in his source-material. He is confirmed, however, by C., 223. But the Book does speak of the fact that Pompilia and Caponsacchi had been imprisoned there. (Cf. Note 255.)

346—RB., IV, 1405-10:

The only one * * * that suffered aught
* * * * * * *
Was * * * Patrizj,

This characteristic sneer of Tertium Quid is based on (P., 212): "This arrest indeed cost the life of Patrizi, because having been overheated, and wounded with a slight scratch, he died in a few days."

347—RB., II, 1439:

Haled hither and imprisoned yesternight

Guido and his accomplices were brought back to Rome the evening of January 3, reaching the Prison at 5 p. m. (P., 212).

348—RB., III, 1641:

The wife lives yet by miracle.

Probably suggested by the words of the second Anonymous Writer (B., 182): "A special favor from the hand of the very Omnipotent, who caused the wife to survive for a few days," etc. Cf. B., 51; and RB., I, 1079; III, 7; IV, 1439.

349—RB., III, 9-10:

She prayed Madonna just that she might live
So long as to confess and be absolved;

Founded on (P., 212): "The unfortunate Francesca Pompilia, under the burden of such wounds as those with which she had been cut to pieces, implored the Holy Virgin for the favor of confession and obtained her prayer." Cf. RB., IV, 1425-32.

350—RB., I, 1078-9:

"* * * four-days'-dying; for she lived
Thus long,"

Pompilia died on January 6, 1698. This is the supposed date of her monologue, which is spoken during her dying hours. Cf. B., 47; and P., 213.

351—RB., I, 1085:

In the good house that helps the poor to die,—

Browning mistakenly assumes that Pompilia was taken to the Convent of Santa Maria Magdalena of the Convertites in the Corso after the assassination, and there died.

This is probably due to his supposition that a woman of evil life must be under their authority at the time of her death for them to enter such

claim. Such was not the case. (Cf. Note 364.) In RB., III, 37, *Other Half Rome* gives St. Anna's as the place of her death, possibly suggested by the fact that Fra Celestino is spoken of (B., 47) in that way. The entry of her death in the parish register of San Lorenzo in Lucina (Note 24) proves that she died in her own home. Hence the hospital bed and hospital cell of Book III are a violation of historic fact, undoubtedly for considerable artistic gain. The death record (p. 280) runs as follows:

"La Signora Francesca Pompilia Comparini Romana in età di anni dicisette e mezzo figlia dell quondam Signor Pietro Comparini Romano Moglie dell Signor Guido Franceschini di Arezzo di Toscana morì nella Comunione della Santa Madre Chiesa nella Casa dove abitava alla strada paolina ricevè tutti li Santissimi Sacramenti e fu seppellita in questa nostra Chiesa."

352—RB., I, 1087-90:

For friend and lover,—leech and man of law
Do service; busy helpful ministrants
As varied in their calling as their mind,
Temper and age:

Referring to the several persons, priests, apothecary, etc., who testify as to her dying hours (B., 45-8). Cf. B., 136, 182.

353—RB., III, 45-7:

a soul
To shrive; 'twas Brother Celestine's own right,
The same who noises thus her gifts abroad.

This refers to the important affidavit of Fra Celestino "the Augustinian Brother" (RB., III, 18-9), which is given (B., 45-6, 47). It was made January 10, 1698, evidently at the request of Pompilia's executor, Tighetti (B., 109, 136). The old Priest speaks with evident emotion and conviction and there can be no doubt of the fact that he was profoundly impressed by the saintliness of the dying girl. The affidavit is the subject of repeated dispute between the lawyers (B., 45, 64, 109, 200). Cf. RB., III, 799-803; VI, 2060.

354—RB., VI, 2061-3:

he confessed, he says,
Many a dying person, never one
So sweet and true and pure and beautiful.

Suggested by the word of Abate Liberato Barberito (B., 48): "I can attest that during the experience I have had, having been four years vicar in the Cure of Monsignor, the Bishop of Monopoli of blessed memory, I have never observed the dying with like sentiments."

355—RB., IV, 1446-9:

So, when they add that her confession runs
She was of wifehood one white innocence
In thought, word, act, from first of her short life
To last of it;

RB., IX, 1437-8:

Admitted not one peccadillo here,
Pretended to perfection,

B., 47: "She always responded that she had never committed any offense against her husband, but had always lived with all chastity and modesty." Cf. B., 63, 136, 182.

356—RB., IV, 1449-50-52:

praying, i' the face of death,
That God forgive her other sins—not this,

Evidently suggested by (B., 47): "She said that God should not pardon her for that sin, because she had never committed it." Cf. B., 64, 136.

357—RB., IV, 1453-4:

So much good,
Patience beneath enormity of ill,

Suggested by (B., 45, 46): "But what is more to be wondered at is that, although she suffered great pain, I never heard her speak an offensive or impatient word nor show the slightest outward vexation," etc.

358—RB., IV, 1455:

"I hear to my confusion." B., 45: "To my own confusion I have discovered and marveled at an innocent and saintly conscience."

359—RB., XI, 1729:

Forgiving me (her monks begin to weep)

B., 45: "May Jesus pardon him, as I have already done with all my heart." And B., 47: "May God pardon him in heaven as I pardon him on earth." Cf. RB., III, 33, 811; VII, 1707-9; B., 65; and C., 223.

360—RB., IX, 1466-73:

'Twas charity, in her so circumstanced,
To spend the last breath in one effort more
For universal good of friend and foe:
* * * * * * *
Re-integrate—not solely her own fame,
But do the like kind office for the priest
Whom telling the crude truth about might vex,

RB., IV, 1465:

First sets her lover free,

Arcangeli (B., 95) puts this very interpretation on the dying words of Pompilia: "For this kind of exculpation, which is all too much a matter of pretense, might help her companion, just as heretofore she had brought blame upon him."

361—RB., IV, 1470-1:

thus she dies revenged to the uttermost
On Guido,

This very charge is made by Arcangeli (B., 95): "And what is more horrible, that, from the said exculpation, her murderer might be the more severely punished." To this Bottini replies (B., 138): "Nor does the assertion of Pompilia when dying tend principally toward vengeance." Cf. RB., IX, 1476-91.

362—RB., IV, 1478:

Confession of the moribund is true!

Such is the claim of the lawyers for the Fisc (B., 55, 64, 136, 182), and this is refuted by Guido's defenders (B., 95, 109).

363—RB., IX, 1462-4:

Nam in articulo mortis, * * *
* * * * * * *
Nemo presumitur reus esse * * *

This exact quotation is not found in the Book, and it was possibly drawn from some other old

authority to which the Poet had made reference in the case. B., lxxvi or 63-4, is perhaps nearest to it: "*assertio in articulo mortis emissa omnem fidem meretur, cum nemo tunc mentiri praesumitur.*"

364—

Within a month after the death of Pompilia the Monastery of the Convertites laid claim to her whole property. The Monastery of Sta. Maria Maddalena delle Convertite al Corso was founded by Leo X in 1520 *pro mulieribus ab inhonesta vita ad honestam se convertentibus* (Bull, May 19, 1520) with the privilege of receiving the property left by bad women who died in Rome, except when these women had legitimate children or had left one-fifth of their property by will to the said Monastery. It ceased to exist as such about the end of the 18th century. (Moroni, *Dizionario di erudizione,* Vol. I, p. 136.) There is therefore no reason for assuming, as Browning does, that these nuns had ministered to Pompilia during her dying hours, and had then turned against her for the sake of securing her property. (Cf. Notes 276, 351.) Lamparelli's argument, pamphlet 17, and the final decree, pamphlet 18, are from this trial. Browning makes both the Pope and Bottini give versions of this (RB., X, 1499-1524; and XII, 672-701). This trial is mentioned (B., 109, 122, 137).

365—RB., IV, 12-4:

> Now for the trial * * * to test
> The truth, weigh husband and weigh wife alike
> I' the scales of law,

That is the trial of Guido and his companions on charge of murder (Note 8). This trial evidently began soon after the murder, as the opening speeches on both sides refer to the "current month of January" (B., 11, 50). Cf. RB., VIII, 22. The last Summary, pamphlet 11, includes an affidavit (B., 127) dated February 9. The closing argument of Bottini, pamphlet 13, makes reference to this Summary. This argument and the closing argument for the defense, pamphlet 16, therefore fall between February 9 and the final date of decision, February 18. This gives foundation for Browning's saying the length of the trial was a month. Cf. RB., I, 241, 819; IX, 132; XII, 425.

366—RB., I, 120:

"*Romana Homicidiorum.*" These words are found on the back of the Book, on the title-page, in the separate file label on the back cover of each of the pamphlets, and as titles for the arguments. The ellipsis is "causa," though in the pamphlet-titles it may be "informatio," the name used in the arguments in referring to former arguments. The Poet (RB., I, 121) translates it as "Roman murder-case."

367—RB., I, 165:

> Twas the so-styled Fisc began,

Possibly Browning was led astray here by the English practice, the Common Law. In this case, which as a matter of course follows the Civil Law, the Roman practice is followed, and Arcangeli opens the case with the first pamphlet of the Book for the Defense.

368—RB., I, 165:

"The Fisc, the Public Prosecutor." The cases against criminals in the Papal courts of criminal procedure were conducted by the advocates and procurators of the *Fiscus,* or Treasury (the State in English Law). The Poet continually names Bottini by this clipped form of his title, *Advocatus Fisci.* The full title is given in the heading to Book IX, *Fisci et Reverendæ Cameræ Apostolicæ Advocatus,* and as such, with due abbreviations, he signs his arguments (B., 67, 158, 166).

369—RB., VIII, 246:

> Having the luck o' the last word, the reply!

The last word in fact seems to have been given by Spreti in pamphlet 16.

370—RB., VIII, 275:

> There's my subordinate, young Spreti,

Spreti as *Advocatus* was really the official equal of Arcangeli, who was *Procurator.* The following passage makes plain their respective functions: "There is a difference between the advocate and the procurator. The advocate is a man skilled in civil and canon law, who defends causes in writing or by word of mouth, on the point of law, setting before the judges that which is true in law, or best founded in law, or the principles of law which ought to be applied in a particular case. His is the scientific part of the cause, and he speaks only to the point of law. * * * Matters of fact are to be established by the procurators, and it is upon these established facts that the advocate develops his judicial conclusions. Hence it is that the office of advocate in the Roman courts is sometimes exercised by ecclesiastics in laic orders." Humphrey, "*Urbs et Orbis,*" p. 428.

371—RB., VIII, 276:

"He'll pant away at proof." Evidently suggested by Spreti's second and most important argument, pamphlet 9, which presents an exhaustive discussion of the proof or fact in the case.

372—RB., VIII, 128:

"*Pro Guidone et Sociis.*" A phrase found in the various file-titles of the arguments for the Defense (B., xxiv; xl; cxxiv; cxl).

373—RB., I, 1053:

"Who, eight months earlier." That is during the *Processus fugæ,* which had been begun the preceding May.

374—RB., I, 177:

> the so-styled Patron of the Poor,

RB., VIII, 1528-9:

> *Pauperum Procurator* is my style:
> I stand forth as the poor man's advocate:

Browning's translation of the official title of Arcangeli, *Procurator Pauperum,* with which he always accompanies his signature. Cf. his full name and title at the beginning of Book VIII and his name VIII, 114, with his signatures to the arguments (B., xxii; xlvii; cxxiii).

375—RB., I, 1128:

"Don Giacinto of the Arcangeli." This is the Italian form of Arcangeli's name, and as such he signs himself in the letter (B., 190). The Poet invents the eight-year-old "curly-pate" and names him for the father, who plays with almost exhaustless variation on the child's name—Cino, Cintino, Cinerello, while the Latin form of the name Hyacinthus is used (RB., VIII, 1801).

376—RB., I, 179:

"Too poor to fee a better." Here again the Poet is thinking of the procedure of English courts, where the judge appoints counsel for the Accused when the latter is "too poor to fee a better." But in trial by Civil Law procedure is somewhat different. The State (B., 114), by its officers, conducts not merely the Prosecution, but the Defense as well—it being the theory that it is as much the State's obligation to defend as to accuse those before its bar. Nevertheless Pellegrini speaks of this matter as follows: "This privilege of defense demands that a defender be assigned to the accused, even against his will and when he claims to be quite capable of his own defense. For to a poor defendant an advocate should be deputed at the expense of the court; and to a rich one, or a skilled one in the law, an advocate should be appointed, but at his own expense." (*De Judiciis Ecclesiasticis,* Lib. II, Vol. 4, p. 320).

377—RB., I, 199:

Thus did the two join issue—nay, the four,

There was an advocate and procurator on each side of the case. The Defense in this case is almost equally shared by the two officers, but the Prosecution is largely in the hands of Bottini. Cf. RB., IV, 44-7.

378—RB., I, 213:

Beside, the precedents, the authorities!

Very naturally in these arguments, the citation of law and precedent is very extensive, and this excites the Poet's ironic comment.

379—RB., I, 222:

Solon and his Athenians?

RB., VIII, 570-1:

The Athenian Code, Solon's,

One of the earliest citations in the Book is (B., x) *legibus Atheniensium, et Solonis.*

380—RB., I, 226-8:

Cornelia de Sicariis hurried to help
Pompeia de Parricidiis; Julia de
Something-or-other jostled *Lex* this-and-that;

The *lex Cornelia de Sicariis,* the *lex Pompeia de Parricidiis,* and the *lex Julia de Adulteriis* are repeatedly cited in the Book. Cf. RB., VIII, 574.

381—RB., VIII, 572-3:

The Laws of the Twelve Tables, that fifteenth,—
"Romulus"

RB., I, 222-3:

Quote the code
Of Romulus and Rome!

These citations immediately follow the above (B., x): "*in illo rudi saeculo Romuli leg. 15.*" and "*in legibus 12 Tabul.*" There seems to be a mispunctuation at the end of RB., VIII, 572.

382—RB., I, 224:

"Baldo, Bartolo." Both are cited frequently in the Book.

383—RB., I, 229:

"Apostle Paul." Paul is cited (B., 15 and 113). The latter citation is quoted in full. (RB., VIII, 673-9). Cf. Note 483.

384—RB., I, 231:

That pregnant instance of Theodoric,

Given at B., 23, 113. Cf. RB., VIII, 482-7.

385—RB., I, 232-6:

"That choice example Ælian gives." Given at B., 120. Cf. RB., VIII, 512-21.

386—RB., VIII, 328:

Our Farinacci, my Gamaliel erst,

This famous Italian Jurist is repeatedly cited in the Book. It is evident that one of these citations (B., 28) was followed up by the Poet, as he quotes from Farinacci at this point in his description of the torture of the vigil. Cf. notes following and Note 526.

387—RB., VIII, 333-4:

Lasting, as it may do, from some seven hours
To ten;

Farinacci says: "*detinetur per quinque aut per decem horas quandoque etiam paulo plus.*"

388—RB., VIII, 338-43:

	Farinacci
"Out of each hundred cases, by my count,	
Never I knew of patients beyond four	*ex centum hominibus qui hoc tormentum passi*
Withstand its taste, or less than ninety-six	*sunt, non credo quatuor*
End by succumbing: only martyrs four,	*aut quinque fuerint martyres, reliqui vero confessores.*
* * * * * *	
Ninety-six full confessors,"	

389—RB., VIII, 346:

Death on the spot is no rare consequence:

Farinacci, "*et plures ob id mortui fuerunt in ipso tormento.*"

390—RB., VIII, 349-353:

The accomplice called Baldeschi: they were rough,
Dosed him with torture as you drench a horse,
* * * * * * * *
So, two successive days he fainted dead,
And only on the third essay, gave up,

P., 213: "Baldeschi made denial, even though the 'cord' was administered to him twice, under which he swooned. Finally he confessed."

391—RB., VIII, 498-9:

Scaliger,
(The young sage,—see his book of Table-talk)

The Poet did not find this in the Book, but in the explanation of the expression, *castæ apes* in the *Scaligerana* of Joseph Just Scaliger: "*Les abeilles sentent si un homme a couché avec sa femme, indubitablement le lendemain s'il approche il est picqué.*"

392—RB., VIII, 502-3:

I mind a passage much confirmative
I' the Idyllist

There is no such quotation in the Book, nor is there any such passage in the Idyllists. The

Poet in his humorous presentation of Arcangeli makes him confuse his reference.

393—RB., VIII, 666:

"*Honorem meum nemini dabo.*" This pseudo-saying of Christ is found (B., cli or 124). Browning evidently did not know of any source beyond the Book, as he makes the Pope question its authenticity (RB., X, 1986-7). Cf. also RB., V, 1704-5.

394—RB., VIII, 680:

Saint Ambrose makes a comment with much fruit,

This citation, which the Poet in his waggish humor causes Arcangeli to forget, is given (B., 113): "For who does not consider an injury to the body or the loss of patrimony less than injury to the spirit or loss of reputation?"

395—RB., VIII, 811-21:

"Sicily's Decisions sixty-first." This citation is given (B., xxviii or 24): "*Muta dec. Sicilia 61*"—"the husband was condemned to the galleys for seven years. For he had his wife summoned outside the city walls by his son and there had killed her; and afterward her body was found to have been devoured by dogs." Cf. B., 111, for the name Leonardus.

396—RB., VIII, 824-30:

The "fructuous sample" of the Dutch Jurist Matthaeus is given by Spreti as follows (B., 111): "It was decided that the husband had proceeded too treacherously in pretending absence, in taking his brother with him, and in killing with prohibited arms."

397—RB., VIII, 1228-47:

The case from Cæsar Panimolle, not Panicollus as Browning has it, is found (B., 24): "Certain noble young men who had killed their wives, after an interval because of strong suspicion of adultery, were absolved by the Royal Council of Naples in view of the quality of the persons concerned * * * although some * * * were condemned to the oars because of certain mutilations * * * because those who do such things are considered enemies of nature."

398—RB., VIII, 1541-57:

This citation is found (B., 29): "And Castrensis holds * * * that when one is permitted under the statute to take vengeance upon a person who has given him offense, he is also permitted to assemble his friends to afford him aid; * * * a husband who had assembled men to beat one who had wished to shame the modesty of his wife * * * ordered his wife to pretend to give ear, and when the intriguer had come, murder was committed."

399—RB., VIII, 425:

"*Honoris causa.*" This claim is made continually in the Book and is practically the sole defense of Guido. Cf. RB., II, 29; VIII, 1477; and C., 223.

400—RB., VIII, 699-722:

This ironic line of argument from Arcangeli's lips is doubtless suggested by what the real Arcangeli has said without any such irony (B., 13): "In ancient times, while the *lex Julia* was in force, wives who polluted their marriage bed underwent the death penalty. * * * Likewise it was so ordained in the Holy Scriptures, for adulterous wives were stoned to death. * * * The solace drawn from public vengeance quieted the anger and destroyed the infamy. But now, in our days, there is a deplorable frequency of crime everywhere, as the rigor of the Sacred Law has become obsolete. * * * The husband's condition would indeed be most unfortunate if either he must live perpetually in infamy or must expiate her destruction * * * by the death penalty."

401—RB., VIII, 859:

But why the innocent old couple slay,

Just this turn is given to the argument from time to time (B., 17, 55, 98, 152, 181).

402—RB., V, 2003:

Absolve, then, me, law's mere executant!

Possibly suggested by (B., 23): "Since for a husband to use the sword for the love of his honor is not to overthrow the laws, but to establish them."

403—RB., VIII, 983-95:

We grant you should have killed your wife,
But killed o' the moment,

Bottini (B., 160) says: "I acknowledge that the Accused should be considered worthy of some excuse if he had slain his wife in the act of taking her in flight with the pretended lover. * * * The suspicion of a just grievance * * * excuses the husband * * * whenever he takes vengeance immediately." Cf. B., 119; RB., II, 1488-1503; V, 1068-70, 1878.

404—RB., VIII, 999-1003:

For, wound * * *
My body, and the smart soon mends and ends:
While, wound my soul where honour sits and rules,
Longer the sufferance, stronger grows the pain
Being *ex incontinenti*, fresh as first.

Exactly this point is made by Arcangeli (B., xv, § *Ultra quod*). Cf. RB., IV, 1528-42.

405—RB., VIII, 1003:

"*Ex incontinenti.*" Should be "*incontinenti*" as contrasted with the phrase *ex intervallo*. Both phrases are used continually in the Book.

406—RB., VIII, 1043-53:

This very point of law is made by Arcangeli (B., xv, § *Præterea*).

407—RB., VIII, 1056-70:

This point of law is taken with some intermingling of irony from B., 16.

408—RB., I, 169:

With five . . . what we call qualities of bad,

These aggravating circumstances of the murder are much discussed by the lawyers, and the Poet has made them a feature of Arcangeli's monologue (RB., VIII, 1108-1381), where he follows the order and discussion of Gambi (B., 53-55). The word "quality" is a mere anglicizing of the frequently repeated "*qualitas*" of the Book.

409—RB., VIII, 1119-25:

first aggravation * * *
* * * * * * *
A regular assemblage of armed men,
Coadunatio armatorum, * * *
Unluckily it was the very judge

B., 53: "The first of these is the assembling of armed men; for according to decrees the Governor of this city," etc. Cf. B., 15, 26, 35, 100, 111, 155, 162.

410—RB., VIII, 1126:

"Four men armed." Cf. B., 53, "even if those assembled are but four." Cf. B., 162.

411—RB., VIII, 1130-8:

This shrewd subterfuge is employed by the real Arcangeli (B., 101) and is refuted by Bottini in turn (B., 155).

412—RB., VIII, 1146-52:

Suppose a man
Having in view commission of a theft,
Climbs the town-wall: 'tis for the theft he hangs,
* * * * * * *
Law remits whipping, due to who clomb wall

This is only a humorous adaptation of the point made by the real Arcangeli (B., 101): "Thus if one wishing to commit theft climb over the walls of the city—even though he could commit that deed without the crime of crossing the wall—even then only a single penalty, namely that for theft, is inflicted as the one chiefly in mind."

413—RB., VIII, 1157-64:

Next aggravation,—that the arms themselves
Were specially of such forbidden sort
* * * * * * *
Delatio armorum, * * *
Contra formam constitutionis, of
Pope Alexander's blessed memory.

B., 53: "The second quality and circumstance is the carrying of arms contrary to the specification of the Constitution of Alexander VIII." This aggravating circumstance—the use of wantonly cruel arms—is also discussed (B., 31, 36, 67, 101, 124, 156, 163).

414—RB., VIII, 1170:

Such being the Genoese blade with hooked edge

RB., II, 147-8:

Triangular i' the blade, a Genoese,
Armed with those little hook-teeth on the edge

Evidently based on (P., 212): "Franceschini's dagger was of a Genoese pattern, triangular, and with certain hooks made in such a way that, in wounding, they could not be drawn from the wound without such laceration as to render the wound incurable." Cf. B., 102, and the Pope's indignant denunciation of it, RB., X, 743.

415—RB., VIII, 1176-7:

Then, if killed, what matter how?
By stick or stone, by sword or dagger,

Arcangeli says (B., 102): "It would have been the very same if they had been slain with the longest of swords, or with sticks, or with stones."

416—RB., VIII, 1190-2:

Through lack of arms to fight the foe:
We had no arms * * *
An unimportant sword and blunderbuss,

This point is made by Arcangeli (B., 96), but there the blunderbuss (*archibusiata*), according to Guido's statement, was in the hands of Caponsacchi. Cf. B., 53.

417—RB., VIII, 1250-6:

Third aggravation * * *
* * * * * * *
* * * murdered in their dwelling-place,
In domo ac habitatione propria,

This third aggravation, breaking in upon the sacred precincts of a home with murderous intent, is much discussed. Cf. B., 54, 66, 165.

418—RB., VIII, 1315, 1318, 1320:

Fourth aggravation * * *
* * * * * *
Mutatione vestium * * * *homicidium ex insidiis*

This aggravating circumstance is urged only at B., lxvi or 54: "*cum mutatione vestimentorum, quo casu homicidium dicitur commissum ex insidiis.*"

419—RB., VIII, 1339-40:

Fifth aggravation, * * *
Sub potestate judicis, * * *

The lawyers evidently considered this circumstance as of great importance. Pompilia was still a prisoner, and therefore in the custody of the State, which was violated by the murder (B., 54, 98, 111, 112, 157, 165).

420—RB., VIII, 1373-6:

Cannot we lump this with the sixth and last
Of the aggravations—that the Majesty
O' the Sovereign had received a wound? to-wit,
Laesa Majestas,

This is not treated by the lawyers as a separate aggravation but three of these attendant crimes—namely, the assembling of armed men, the murder of a prisoner, and murder in anger over a lawsuit, are all of them spoken of as *Læsa Majestas,* or criminal insult to the majesty of the law, or of the authority of the Prince. See especially B., 164. Cf. also B., 54, 66, 135, 154, 165.

421—RB., VIII, 1378:

"*In odium litis.*" To use violence because of anger over a lawsuit was in itself a capital crime, and Guido is charged with this motive in the death of Pietro. Cf. B., 27, 66, 100, 113, 133, 153, 164.

422—RB., VIII, 1521-2:

Reminds me I must put in a special word
For the poor humble following,

The plea for the fellow criminals is added to several of the arguments, and the third pamphlet is entirely devoted to their case.

423—RB., VIII, 1578-83:

Of the other points that favour, leave some few
For Spreti; such as the delinquents' youth.
* * * * * * *
Two may plead exemption * * *
Being foreigners,

These points of law, though slightly touched upon by Arcangeli (B., 103), are fully discussed by Spreti in each of his three arguments (B., 31, 114, 187).

424—RB., VIII, 1580-1:

One of them falls short, by some months, of age
Fit to be managed by the gallows;

RB., X, 964:

And none of them exceeds the twentieth year.

Minority is claimed for Domenico and Francesco (B., 187), but this evidently means less than 25. Francesco's age is given (B., 187) as 24. According to P., 213, the others were 22. Cf. RB., X, 2080-1.

425—RB., IX, 1406:

I leave my proper function of attack!

Bottini answers somewhat tartly (at B., 135) this very complaint on the part of Spreti.

426—RB., IX, 569:

So would he bring a slur on Judith's self,

Just such reference to Judith is made by Bottini (B., 61) to which Arcangeli retorts (B., 91). Her example is again cited (B., 179).

427—RB., I, 245-6:

Till the court out all short with "Judged, your cause.
Receive our sentence!"

The formal sentence against Guido and his companions is given in the Book only at B., 193, but the letters (B., 190-1) speak of it. Cf. RB., I, 257: "I learn this from epistles," etc. C., 223, gives an account of the way Guido received this sentence, quite out of keeping with the Poet's conception of the character.

428—RB., I, 274:

Procedure stopped and freer breath was drawn

Evidently suggested by the words of the third letter (B., 191): "At this favorable decision, the defense took heart and Guido's good friends began to breathe again."

429—RB., I, 285:

Even the Emperor's Envoy had his say

Evidently suggested by the second letter (B., 191): "The Ambassador of the Emperor spoke of that point on Tuesday, as he himself told me day before yesterday." Cf. RB., XI, 2279.

430—RB., I, 346:

I find, with his particular chirograph,

Browning merely anglicizes the words of the first letter (B., ccxxxv): "*chirografo particolare.*" This of course is utterly unintelligible as English idiom. The words seem to refer to the special writ of condemnation, the order for the execution. Spelled cheirograph at RB., XII, 258.

431—RB., X, 212:

I have worn through this sombre wintry day,

RB., I, 1236:

Droop of a sombre February day

Referring to Friday, February 21, the eve of the execution of Guido. Cf. RB., X, 283-5.

432—RB., I, 347-8:

Friday night;
And next day, February Twenty-Two,

This was indeed Friday night, as can be gathered from the second letter (B., 191), where the date of sentence, February 18, is spoken of as being on Tuesday. (Cf. RB., XII, 245.) Arcangeli's letter (B., 190), written the day of the execution, is dated February 22.

433—RB., XII, 118-23:

no sooner the decree
Gone forth, * * *
Than Acciaiuoli and Panciatichi,
* * * * * * *
* * * intimate the sentence

P., 213: "They were assisted by Abate Panciatichi and Cardinal Acciajoli." Nicolas Acciajoli was born at Florence on July 10, 1630, became cardinal November 29, 1669, and died February 23, 1719. Bandino Panciatichi, also a Florentine, born June 10, 1629, became cardinal February 13, 1690. For a time he was patriarch of Jerusalem, and at this time was prefect of the congregation of the counsel. They were aged and distinguished ecclesiasts, probably chosen in deference to Guido's rank. They certainly were not the type of men to "crouch * * * two awe-struck figures" (RB., I, 1290-2). C., 224, is likewise at odds with the passion imagined by Browning for his Guido at the hour of death. The Poet's version is in accord with the increase of the terrible in the villainy of Guido. Cf. RB., XI, 1-2.

434—RB., XII, 124:

Were closeted ere cock-crow with the Count.

P., 213: "At the eighth hour (2 a. m.), Franceschini and his companions were informed of their death." Cf. RB., XI, 24.

435—RB., XII, 129-30:

And when the Company of Death arrived
At twenty hours,—the way they reckon here,—

P., 213: "At the twentieth hour (2 p. m.), the Company of Death and of Pity arrived at the Prisons." Cf. RB., I, 1309-19; XI, 2414-5.

436—RB., XI, 32:

And why, then, should I die twelve hours hence?

The "twelve hours" was evidently drawn from the comparison of the times given in the two preceding notes. Cf. line 123.

437—RB., XII, 128:

Were crowned at last with a complete success.

P., 213: "Nor did they delay in preparing themselves to die well." C., 224, gives a much fuller account of this. Cf. RB., XI, 433; XII, 417.

438—RB., XII, 132-4:

The Count was led down, hoisted up on car,
Last of the five, as heinousest, you know:
Yet they allowed one whole car to each man.

Cf. P., 213: "The condemned were made to go down stairs and were placed upon separate carts to be drawn to the place of execution."

439—RB., XII, 135-7:

His intrepidity, nay, nonchalance,
As up he stood and down he sat himself,
Struck admiration into those who saw.

P., 213: "Franceschini, who showed more intrepidity (*intrepidezza*) and composure (*sangue freddo*) than the others, to the wonder of all." Cf. C., 224, where Guido's attitude is described quite differently.

440—RB., XII, 139-44:

From the New Prisons by the Pilgrim's Street,
The Street of the Governo, Pasquin's Street,
* * * * * * *
The Place Navona, the Pantheon's Place,
Place of the Column, last the Corso's length,

The Poet merely adopts the statement of the line of march as given (P., 213): "*Partirono dalle Carceri tenendo la Strada del Pellegrino, del Governo, di Pasquino, Piazza Navona, la Rotonda, Piazza Colonna, ed il Corso.*" Cf. RB., I, 1325. C., 224, gives an interesting amplification of this journey to the scaffold, quite different from that at RB., XII, 150-63.

441—RB., I, 1328:

Two gallows and Mannaia crowning all.

P., 213: "A great platform with mannaia, and two great gallows, which had been built for the execution of the criminals." A fuller account is given C., 224. Mannaia is also mentioned B., 124. Browning treats this subject with most graphic and passionate power in the words of Guido (RB., XI, 186-258).

442—RB., I, 350:

Not at the proper head-and-hanging-place

RB., XII, 106:

The substituting, too, the People's Square

P., 213: "On February 22, was seen in the Piazza del Popolo." Cf. RB., X, 2108-11; XII, 146, 311-2; and C., 224.

443—RB., XII, 113-5:

Palchetti were erected in the Place
And houses, at the edge of the Three Streets,
Let their front windows at six dollars each:

Cf. P., 213: "Many stands (*palchetti*) were constructed for the accommodation of those curious to see such a terrible execution, and so great was the concourse of people that some windows brought as much as six dollars." Cf. C., 224.

444—RB., XII, 167:

To mount the scaffold-steps, Guido was last

P., 213: "The first who was executed * * * and the last, Franceschini."

445—RB., XII, 173-91:

As he harangued the multitude beneath.
He begged forgiveness on the part of God,
And fair construction of his act from men,
Whose suffrage he entreated for his soul,
Suggesting that we should forthwith repeat
A *Pater* and an *Ave*, with the hymn
Salve Regina Cœli, for his sake.
Which said, he turned to the confessor, crossed
And reconciled himself, with decency,
* * * * * * *
* * * then rose up, as brisk
Knelt down again, bent head, adapted neck,
And, with the name of Jesus on his lips,
Received the fatal blow.
The headsman showed
The head to the populace.

P., 213:

When the last-named had mounted the platform,
he asked pardon for his sins,
and begged them to pray for his soul,
adding that they should say
a *Pater*, an *Ave*, and
Salve Regina for him.
When he had made the confessor announce
that he was reconciled,
he adjusted his neck upon mannaia
and with the name of Jesus on his lips,
he was beheaded.
The head was then shown to the people by the executioner.

Cf. C., 224.

446—RB., XII, 198-202:

"He wore the dress he did the murder in,
That is, a *just-a-corps* of russet serge,
Black camisole, coarse cloak of baracan
* * * * * *
White hat, and cotton cap"

B., 213:

He wore the same garb as when he had committed the crime;
that is, a *giustacore* of brown serge,
black *camicivola*, coarse cloak of *baracano*,
white hat and *cap di cotone*

Cf. V, 1565; VI, 2001; VIII, 1315-7.

447—RB., I, 361:

"All Rome for witness." The second letter says (B., 190): "All Rome was there, as you may believe." P., 213, also speaks of the "great concourse of people." C., 225, says: "Rome has never seen an execution with a greater concourse of people."

448—RB., I, 362-3:

Remonstrant in its universal grief,
Since Guido had the suffrage of all Rome.

The second letter (B., 190) says: "He has been pitied by all gallant men." Cf. RB., XII, 275-6.

449—RB., XII, 272:

Nor shall the shield of his great House lose shine

B., 190: "And his House has lost nothing in the matter of reputation."

450—

The letter of Arcangeli given (RB., XII, 239-88) is merely a close, but humorous paraphrase of the letter of Arcangeli (B., ccxxxv). The original is placed side by side with Browning's version below.

The real letter (B., ccxxxv):

Tardi giunsero

le giustificationi inviatemi da V. S. Illma
à prò della b. m. (benedetta memoria)
del Sig. Guido Franceschini,

poiche havendo determinato

La Congregazione di Mons. Governatore
che detto Sig. Guido

fosse Reo di morte

non ostanti le Ragioni deditte

a suo favore

a gran fatiga dalla medema

ottenni qualche dilatione per giustificare
il suo clericato da me allegato

al quale effetto fù spedita staffetta
in Arezzo;

ma giudicando espediente
La Santità di Nostro Signore
il non differire

The letter of the Poem:

Late they arrived, too late, egregious Sir,
Those same justificative points you urge
Might benefit His Blessed Memory
Count Guido Franceschini now with God:
Since the Court,—to state things succinctly,—styled
The Congregation of the Governor,
Having resolved on Tuesday last our cause
I' the guilty sense, with death for punishment,
Spite of all pleas by me deducible
In favour of said Blessed Memory,—
I, with expenditure of pains enough,
Obtained a respite, leave to claim and prove
Exemption from the law's award,—alleged
The power and privilege o' the Clericate;
To which effect a courier was despatched,
But ere an answer from Arezzo came,
The Holiness of our Lord the Pope (prepare!)
Judging it inexpedient to postpone

l'essecutione della sentenza gia destinata	The execution of such sentence passed,
hebbe per bene con Chirografo particolare	Saw fit, by his particular cheirograph,
derogare ad ogni Privilegio	To derogate, dispense with privilege,
Clericale, che gli fosse potuto competere,	And wink at any hurt accruing thence To Mother Church through damage of her son:
et alla minorità rispetto à	Also, to overpass and set aside That other plea on score of tender age,
Franc. di Pasquino	Put forth by me to do Pasquini good,
uno de complici;	One of the four in trouble with our friend.
si che hoggi è stata esseguita la sentenza contro tutti cinque,	So that all five, to-day, have suffered death
colla sola distintione nel genere della morte, havendo il Sig. Guido	With no distinction save in dying,—he,
terminata la sua vita colla decollatione;	Decollate by mere due of privilege, The rest hanged decently and in order. Thus Came the Count to his end of gallant man, Defunct in faith and exemplarity: Nor shall the shield of his great House lose shine Thereby, nor its blue banner blush to red.
Servivà il consolatione à suoi Parenti, et Amici	This, too, should yield sustainment to our hearts—
l'esser stato commiserato	He had commiseration and respect In his decease from universal Rome, *Quantum est hominum venustiorum,*
da tutti gl'huomini d'honore, e dà i buoni,	The nice and cultivated everywhere:
ancorche, confessando la mia	Though, in respect of me his advocate,
debolezza non posso negare di	Needs must I groan o'er my debility,
sentirne un infinito Rammarico,	Attribute the untoward event o' the strife
attribuendo il tutto al non haver'	To nothing but my own crass ignorance
io saputo rappresentare le sue solide Ragioni.	Which failed to set the valid reasons forth, Find fit excuse: such is the fate of war!
Compensi il Sig. Iddio questo funesto accidente	May God compensate us the direful blow
alla di lui Casa, et al tutti i suoi Amici	By future blessings on his family,
con copioso felicità,	
e desideroso della continuazione di	Whereof I lowly beg the next commands;
suoi comandi, mi raffermo per sempre	Whereto, as humbly, I confirm myself . . . "

451—RB., XII, 363:

And want both Gomez and the marriage-case,

Evidently suggested by the words in the third letter (B., 191): "I may serve your Excellency in the matrimonial case and in the other of Gomez." Cf. RB., XII, 657.

452—RB., XII, 367-8:

"Adverti supplico humiliter quod." Taken from B., xii.

453—RB., XII, 446-9:

That barefoot Augustinian * * *
* * * preached to purpose yesterday

This sermon is purely fictitious so far as the Franceschini case is concerned, but the Poet may have used to some extent passages from medieval sermon literature which he had read.

454—RB., XII, 715-6:

I've a second chance
Before the self-same court o' the Governor

This final suit as to Pompilia's restoration to good name by decree of court was indeed before the same court of the Governor as the runaway and murder cases. Cf. B., 202, and Note 364.

455—RB., XII, 708:

Who but I institute procedure next

Not Bottini, but Gambi instituted procedure against the good fame of the dead Pompilia (B., 202). Cf. RB., I, 1174.

456—RB., XII, 752-67:

The Instrument
Is plain before me, print that ends my Book
With the definitive verdict of the Court,

This is the last pamphlet of the Book, entitled *Instrumentum Sententiæ Definitivæ* (B., cclix), in which the court, presided over by Marcus Antonius Venturinus, *locum tenens* (B., 203) absolutely clears the reputation of Pompilia by a formal pronouncement of court. B., 204: "Proof is not established as regards the pretended adultery, and therefore the memory of the same Francesca should be and is entirely restored to her pristine reputation.

457—RB., XII, 757-67:

	B., cclix or 202:
"In restitution of the perfect fame	*Latae pro reintegratione famae,* &
Of dead Pompilia, *quondam* Guido's wife,	*existimationis quondam Franciscæ Pompiliæ, olim Uxoris quondam Guidonis Francheschini de Aretio;*
And warrant to her representative	*necnon absolutoriæ ad favorem*
Domenico Tighetti, barred hereby,	*D. Dominici Tighetti uti hæredis*
While doing duty in his guardianship,	*beneficiati eiusdem Franciscæ Pompiliæ*
From all molesting, all disquietude,	*ab omnibus inquietationibus, and molestationibus,*
Each perturbation and vexation brought	*vexationibus, & perturbationibus illatis,*
Or threatened to be brought against the heir	*& inferri comminatis*
By the Most Venerable Convent called	*a Venerabili Monasterio*
Saint Mary Magdalen of the Convertites	*S. Mariæ Magdalenæ Convertitarum*
I' the Corso.	*ad Cursum*

458—RB., VIII, 130-5:

This deliberation over phrases for expressing the idea has a minuter irony when studied in the light of the Book. His sneer at the first phrase as commonplace has additional point when we see it was the word of Gambi, one of Arcangeli's opponents (B., lxi). The expression *"taedas jugales celebrare"* is found in Catullus, 64, 302. *Connubio stabili sibi junxit* is indeed "free from modern taint," as it is adapted from Æneid I, 73. The *nupserat sinistris avibus* in which he finally rests is the opening phrase of the first argument of the real Arcangeli (B., ix).

459—RB., VIII, 165-6:

Ha, my Bottini, * * *
How will he turn this and break Tully's pate?

That is, what wretched Latin he will write. This sneer has the more point when we know

that the sentence sneered at is taken from one of Bottini's arguments (B., 142); hence his contempt in "Stupidly put." And the next Latin quotation gives his own words from his third argument (B., 87).

460—

The following notes illustrate in detail the Poet's use of the Latin of the Book in the monologue of Arcangeli. That Browning's modifications may be seen at a glance, the two versions are placed in parallel columns; the Book in the left-hand column, *The Ring and the Book* (Book VIII) in the right-hand column. To facilitate the comparison, italics in the Latin of the Book will indicate words the Poet has omitted in his version, and italics in the Latin of the Poem will indicate words which are somewhat changed from the Book.

461—

B., lxi, or 50:	line	
in uxorem duxit	130	duxit in uxorem

462—B., lxi or 50:

facti ideo series ita se habet	140	ita se habet ideo series facti

463—

These are the actual opening words of Arcangeli's first argument (B., ix or 10):

nupserat sinistris avibus	142	nupserat, heu sinistris avibus
Dominus Guido *Francischini*, nobili genere ortus	144	Dominus Guido, nobili genere ortus,
Franciscæ Pompiliæ	145	Pompiliæ.

464—

These words of Bottini, at which Arcangeli sneers, are found (B., clxxii, 142):

existimanda *sit qualitas confessioni adjecta*,	167	*existimandum*
quod maritus designaverit elementa	168	quod *Guido* designaverit elementa
d. epistolæ, quæ	169	dictæ epistolæ, quæ fuerint
super inducto ab ea calamo,	170	superinducto ab ea calamo
fuerint atramento notata,	171	notata atramento
quia ipsa scribere nesciebat.	172	quia ipsa scribere nesciebat

465—

The following is the reply of Arcangeli (B., civ or 87) to the above point made by Bottini:

inanis est responsio,	175	inanis est responsio
quod singula elementa *dictæ primæ* epistolæ	177	quod singula elementa epistolæ
fuerant prius designata per D. Guidonem,	179	fuerant per *eum* prius designata
et deinde superinducto per eam calamo	181	et deinde superinducto calamo
efformata, ut ipsa asserit	183	per eam, efformata, ut ipsa asserit

466—

This is found in one of the marginal annotations to Pompilia's cross-examination (B., lxxxvi or 72):

eius vir lineabat epistolas	186	vir ejus lineabat epistolam

467—B., lxxi or 59:

fatetur eam conscripsisse	188	fatetur eam *scripsisse*
ut inquisito obtemperaret	190	ut *viro* obtemperaret, apices
eo designante apices, ipsaque calamum	192	eo designante, ipsaque calamum
super inducente	193	super inducente

468—B., ccxlviii or 195:

ita pariter optime	194	ita pariter
ostendit epistolam	196	epistolam ostendit, *medius fidius*
non voluntarie, sed coacte scriptam	198	non voluntarie sed coacte scriptam.

469—

The expression *ignea arma* for firearms is very common in the Book. The passage which seems closest to this fragment is found (B., lxiv or 53):

Francischinus in sequendo uxorem	205	Guido Pompiliam
armis igneis munitus	207	armis munitus igneis *persequens*

470—

The following alternative term for firearms is used by Bottini (B., clxxxiii or 150):

arma sulphurea gestante	208	arma sulphurea *gestans*

471—

The expression for pistol at which Arcangeli sneers is used by Lamparellus (B., ccxlvi or 194):

igneo breviori sclopulo eam persequentis	210	armatus breviori sclopulo

472—B., cxiv or 96:

ense viatorio solummodo	214	ense solummodo viatorio
instructus	215	instructus

473—

This point of law and quotation are made by Arcangeli (B., xi or 11):

ultra quod hic non agitur	442	ultra quod hic non agitur
de probatione Adulterii	444	de probatione adulterii
ad irrogandam pœnam,	446	ad irrogandam pœnam
sed ad effectum	448	sed ad effectum
excusandi	449	excusandi
Occisorem,	450	occisorem
et ad illius defensionem	451	et ad illius defensionem
quo casu leviores probationes	453	quo casu *levior probatio*
exhuberarent	454	*exuberaret*

474—B., cxxxvii or 113:

adeo ut qui honorem *suum* spernit,	522	adeo ut qui honorem spernit
et non curat recuperare	524	et non recuperare curat
se ulciscendo	526	se ulciscendo
nil differat a belluis * * *	527	nil differat a belluis
Quinimo irrationabilior	528	quinimo irrationabilior
ipsismet belluis	529	ipsismet belluis
reputetur	531	reputetur.

475—RB., VIII, 587-681:

Drawn almost entirely from the actual language of various parts of the Book. Even the English passages are usually close paraphrases of the Italian original behind them. The Poet frequently follows his text so closely as to use etymological equivalents wherever possible.

476—

The following quotation from St. Jerome, which the Poet gives partly in Latin and partly in English, is found (B., cl or 123):

ubi honor non est	587	ubi honor non est
ibi contemptus est: ubi contemptus,	588	ibi contemptus est; and where contempt,
ibi frequens iniuriæ: ubi iniuria,	589	ibi injuria frequens; and where that,
ibi et indignatio:	590	* * * ibi et indignatio;
ubi indignatio, ibi quies	591	And where the indignation, ibi quies
nulla: ubi quies non est,	592	Nulla: and where there is no quietude
ibi	593	ibi
mens a proposito sæpe dejicitur	595	mens a proposito sæpe dejicitur

477—

The following quotation and citation from Gregory is drawn from B., cxxxvii or 113:

cum difficilius sit	597	*quum* difficilius sit
iram cohibere,	598	iram cohibere
quam miracula facere;	599	quam miracula facere
ut inquit D. Gregor. dial. I.	600	So Gregory smiles in his First Dialogue.

478—

The following magniloquent passage from the first Anonymous Writer is ridiculed by his opponent later on. Browning merely translates it and fits it to blank verse (B., cli or 124):

e in vero un'animo ingenuo, e che	601	* * * the ingenuous soul, the man
fa stima del suo honore, e della sua riputazione,	602	Who makes esteem of honour and repute,
ogni qual volta resta offeso atrocamente in parte cotanto sensibile, e cotanto delicata, ogni qual volta	603	Whenever honour and repute are touched,
giunge al termine de furore, e della disperazione,	604	Arrives at term of fury and despair,
perduto ogni lume di ragione,	605	Loses all guidance from the reason-check:
come delirante, e frenetico,	606	As in delirium or a frenzy-fit,
non puole appagarsi,	607	Nor fury nor despair he satiates,—no,
nè meno se giugnesse a sconvolgere,		
quando li fosse possibile,	608	Not even if he attain the impossible,
i Cardini dell 'Universo	609	O'erturn the hinges of the universe
per annichiliare	610	To annihilate—not whoso caused the smart
non solamente gli Autori,	611	Solely, the author simply of his pain,
ma ancora il luogo, e la memoria	612	But the place, the memory, *vituperii*,
de suoi scorni, e de suoi vituperi, quia	613	O' the shame and scorn: quia, * * *
* * * * * * *		
zelus, et furor viri	617	zelus et furor viri
non parcet	618	non parcet
in die vindictæ,	619	in die vindictæ
nec acquiescet	620	nec acquiescet
cuiusquam precibus, nec suscipiet	621	*cujusdam* precibus,—nec suscipiet,
pro redemptione	622	pro redemptione
dona plurium.	623	dona plurium.

479—

Notice the literality of the production of the citation of Solomon included in the midst of the preceding passage (B., cli or 124):

come parla in questo proposito lo	613	"says Solomon,
Spirito santo per bocca di Salomone	614	(The Holy Spirit speaking by his mouth
nei Proverbi al 6. in fine	615	In Proverbs, the sixth chapter near the end)"

Cf. RB., I, 229.

480—

The quotation from the letters of St. Bernard follows the above in the text of the Anonymous Pamphlet (B., cli or 124):

al che molte bene conferisce quello, che dottamente	626	Whereto, as strangely consentaneous here,
scrive San Bernardo in Epistol.	627	Adduce Saint Bernard in Epistle writ
ad Robert. Nepot. suum in princip.	628	To Robertulus, his nephew: * * *
Dolor quippe nimius non deliberat,	629	Dolor quippe nimius non deliberat,
non verecundatur,	631	non verecundatur,
non consulit rationem,	632	non consulit rationem,
non metuit dignitatis	633	non dignitatis metuit
damnum, *legi non obtemperat, iudicio non acquiescit*, modum	634	damnum
	635	modum et ordinem
ignorat, et ordinem	636	ignorat

481—

The account of Samson follows the above passages immediately (B., cli or 124) in the Anonymous Pamphlet. The second Italian Pamphleteer sneers at this passage near the close of his own Pamphlet (p. 183).

Sansone * * *	640	Samson * * *
soffrì con animo intrepido la privazione	644	Blinded he was, * * *
degli occhi, e altre dolenti sciagure,	645	Intrepidly he took imprisonment,
	646	Gyves, stripes and daily labour at the mill:
mà quando si vidde destinato à servire	647	But when he found himself, i' the public place,
di trastullo ne i luoghi publici,		
e che in quelli udiva le derisioni, e le beffe del Popolo,	648	Destined to make the common people sport,
s'accese lo sdegno nel suo petto, con impeto tale,	649	Disdain burned up with such an impetus
che tutto smanie, tutto furie	650	I' the breast of him that, all the man one fire,
moriatur, disse,	651	Moriatur, roared he * * *
anima mea cum Philistiin,	652	Anima mea, with the Philistines!
e data una scoffa alle Colonne, che sostenevano il Palazzo, lo ridusse in ruina,	653	So, pulled down pillar, roof, and death and all,
multosque plures interfecit	654	Multosque plures interfecit, ay
moriens,	655	moriens
quam vivens	656	quam *vivus*
occiderat.	657	occiderat.

482—RB., VIII, 660-73:

This pseudo-saying of Christ (cf. Note 393) and the inclosing text and comment are taken directly from the second Anonymous Pamphlet (B., cli or 124).

e Christo medesimo, ancorche fosse mansuetissimo,	660	Our Lord Himself, made all of mansuetude,
e havesse somma sofferenza nel ricevere	661	Sealing the sum of sufferance up, received
gli obbrobrii, e gli strapazzi	662	Opprobrium, contumely and buffeting
senza mai lamentarsi, nientedimeno quando si senti	663	Without complaint: but when He found Himself
toccato nell' honore, rispose	664	Touched in His honour never so little for once,
	* * * * * *	
Honorem meum nemini dabo;	666	Honorem meum nemini dabo!
	* * * * * *	
e è certo,	668	And certainly the example so hath wrought,
che chiunque	669	That whosoever, at the proper worth,
apprezza la reputazione, e l'honore,	670	Apprises worldly honour and repute,
stima molto meno il morire huomo honorato	671	Esteems it nobler to die honored man
sotto una mannaia, che vivere per molti secoli	672	Beneath Mannaia, than live centuries
in faccia al mondo con vergogna, e dishonore	673	Disgraced in the eye o' the world.

483—

The following quotation from the Epistle to the Corinthians and the citation from St. Ambrose are given in Spreti's argument (B., cxxxvii or 113):

expedit mihi magis mori	676	Expedit mihi magis mori
quam ut gloriam meam quis evacuet	678	quam ut gloriam meam quis evacuet
Apostol. epist. I. ad Corinth. cap. 9.	679	See, ad Corinthienses: whereupon
Et D. Ambros. lib. 3. etc.	680	Saint Ambrose makes a comment, etc.

Browning waggishly makes Arcangeli forget this citation (lines 681-3).

484—B., xxxi or 26:

quod si maritus de adulterio	756	quod si maritus de adulterio non
uxoris non conqueratur	757	*conquereretur*
præsumitur Leno,	758	presumitur leno

485—B., xxxii or 26:

cum Iudicialiter	764	*quum* judicialiter
prosequeretur	765	prosequeretur
illius Causam	766	*Guidonis* causam
ipsi accidit,	767	accidit ipsi
quod moverit risum, et cachinnos	768	quod risum moverit et cachinnos
fere in omnibus	770	fere in omnibus
etiam sensatis, et cordatis viris;	771	etiam sensatis et cordatis, men
non tamen dicam	773	ipsismet in judicibus
In ipsismet Iudicibus.	774	non tamen dicam

486—B., cxxxiii or 110:

Asserunt enim unanimiter	783	Asserunt enim unanimiter
prædicti DD.,	784	doctores
quod mariti	785	quod mariti
reputantur viles, et cornuti	786	viles, cornuti reputantur
si propriis manibus	788	si propriis manibus
non sumunt	789	non sumunt
vindictam, sed	790	vindictam, but * * *
expectant illam fieri	791	expectant illam fieri
per Iudices, qui summopere rident,	792	per judices, qui summopere rident
et cachinantur	794	et cachinnantur.

487—B., cxxxiii or 110:

deliquit enim,	795	deliquit enim
ut vulgi, et Doctorum Censuram	797	ut vulgi et doctorum evitaret
evitaret,	798	censuram
et sic ne ammisso honori istam quoque	800	et sic ne istam quoque ignominiam
Ignominiam superadderet	801	amisso honori superadderet

488—B., cxxxiv or 111:

malus modus *eam* occidendi	822	malus modus occidendi

489—B., cxxxiv or 111:

nimis dolose	831	nimis dolose
operatum fuisse	832	fuisse operatum

490—B., xix or 18:

qui, ut fraudarent	875	qui ut fraudarent
legitime vocatos	876	legitime vocatos
ad Fideicommissum	877	ad fidei commissum
partum *vilissimum* supposuerunt	878	partum supposuerunt
immemores Reos factos esse	879	immemores reos factos esse
ultimi supplicii	881	ultimi supplicii

491—

The following point as to the excuse of *honoris causa* is given by Arcangeli (B., xxii or 19) and illustrated by the "nice decision of Dolabella" (Cf. RB., I, 230):

non semel	906	non semel
in contingentia facti	907	in contingentia facti
evaserunt Impunes	908	impunes evaserunt
qui	909	qui
iusto dolore moti	910	justo dolore moti
apposuerunt manus *etiam*	911	apposuerunt manus
in innocentes;	912	in innocentes.
Mulier *enim* quædam Smirnea	914	Mulier Smirnea quædam
Virum, et Filium ex eo conceptum	916	virum et filium ex eo conceptum
interfecerat, ex quo	918	interfecerat, ex quo
Vir perdiderat filium suum	919	vir filium suum perdiderat
primi matrimonii,	921	matrimonii primi
accusata deinde	922	deinde accusata
apud Dolabellam *Proconsulem*,	923	apud Dolabellam
neque duabus cædibus	924	*nec* duabus cædibus
contaminatam liberare,	925	contaminatam liberare
neque iusto dolore impulsam	927	voluit.
condemnare voluit,	928	*nec* condemnare
	929	justo dolore impulsam
sed remisit	930	sed remisit
ad Areopagum	931	ad Areopagum
Sapientissimorum Iudicum	932	sapientissimorum judicum
Cætum,	933	cœtum
ubi, cognito de Causa,	935	ubi, cognito de causa
responsum fuit,	936	responsum *est*
ut ipsa, et Accusator	937	ut ipsa et accusator
post centum Annos	938	redirent
redirent,	939	post centum annos
et sic	940	et sic
duplici Parricido Rea,	941	duplici parricido rea
quamvis etiam Innocentem	943	quamvis etiam innocentem
occidisset,	945	occidisset
undequaque	946	undequaque
evasit Impunis, ut refert	947	evasit impunis, See the case at length
Valer. Max. Dictor. factor.	948	in Valerius, fittingly styled Maximus,

492—

The next citation from Cyriacus is made by Arcangeli at the close of his first argument (B., xxii or 20):

Similiter Uxor, quæ mandaverat	951	Similiter uxor quæ mandaverat
Homicidium Viri *ob iustum dolorem*	953	homicidium viri
ex denegatione debiti	954	ex denegatione debiti
matrimonialis	956	matrimonialis
fuit pæcuniaria mulcta	957	fuit pecuniaria mulcta
punita, et ad temporalem	959	punita, et ad *poenam*
permanentiam	960	temporalem
in Monasterio	961	in monasterio.

493—

The following distinction as to the right of father and husband to kill a shameless daughter or wife is made by Bottini (B., cxcvii or 160):

quia semper	1017	quia semper
præsumitur,	1018	presumitur
quod capiat	1019	quod capiat *pater*
bonum consilium pro filio	1020	bonum consilium pro filio
ex instinctu	1022	ex instinctu
Paterni amoris,	1023	amoris paterni
quam confidentiam	1024	quam confidentiam
non habet	1025	non habet
de Viro	1026	de viro

494—

The following sneer of Arcangeli at his opponent is based on the same phrase with other verbal forms found at B., cxxxvi or 113, and ccxxix or 186:

sit in plenitudine intellectus	1040	in plenitudine intellectus es?

495—B., xxxii or 26:

quod contigisse in præsenti casu	1141	quod contigisse in præsenti casu
manibus palpatum est	1142	manibus palpatum est

496—

The following passage is found in variant forms in several passages (Note 413), but the present quotation is reproduced exactly from B., lxv or 53:

delatio armorum	1162	delatio armorum
contra formam Constitutionis	1163	contra formam constitutionis, of
Alexandri VIII.	1164	Pope Alexander's blessed memory.

497—

This rather pompous apology is made twice (B., xliii or 34; cii or 85).

sed parcat mihi tam eximius Doctor	1172	sed parcat mihi tam eximius *vir*

498—

This claim of Guido that he did not order the assassins to kill the Comparini, but merely to mutilate them (cf. Note 526), was made on his first examination, but seems to have been abandoned by him when he was subjected to the torture of the vigil. The words *ut Doctorum utar verbis* are transferred from their place in the midst of the following passage to line 1576 of this monologue (B., xxxv or 28. Cf. B., 20):

solummodo fassus fuit	1221	solummodo fassus *est*
dedisse mandatum, *ut Doctorum utar*	1222	dedisse mandatum
verbis, ad sfrisiandum dictam	1223	ad sfrisiandum, *dicam*,
suam Uxorem tantum	1225	uxorem tantum

499—B., xxix or 24:

ex causa abscissionis genitalium *de facto secutæ*	1240	ex causa abscissionis *partium;*
quia nempe id facientes reputantur	1241	*qui* nempe id facientes reputantur
inimici naturæ	1242	naturæ inimici

The change of *quia* to *qui* is probably an accidental error rather than a conscious modification.

500—B., xviii or 17:

obiectum funditus corruit	1248	objectum funditus corruit

501—B., lxvi or 54:

in domo, ac habitatione propria	1256	in domo ac habitatione propria

Cf. Note 417.

502—

The following claim as to Guido's right to secure his wife's departure from the monastery for the purpose of killing her is made by the real Arcangeli (B., xviii or 16. Cf. Note 291):

nam quicquid sit	1283	nam quicquid sit
an de consensu ipsius Domini Guidonis	1284	an de consensu *nostro*
educta esset	1285	a monasterio
a Monasterio, *de quo nullum verbum habemus in Processu.*	1286	educta esset
potuit id dissimulare,	1287	*Potuimus* id dissimulare
ut aditum habere	1289	ut aditum habere
potuisset	1291	*potuissemus*
ad eam occidendam	1292	ad eam occidendam

503—The following passage contains the only unmistakable error of Browning in the transfer of the book-Latin to his Poem. "via" for "ira" is doubtless a mistake in reading his own written notes (B., xxxiv or 28):

in quibus Rex Regum, *et dominus*	1296	in quibus assistit Regum Rex
dominantium assistit per essentiam,	1297	per essentiam
et nihilominus delinquens in eis	1298	et nihilominus in eis
ex iusta Ira, *et dolore*	1299	ex justa via delinquens
excusatur	1301	excusatur

504—B., lxvi or 54:

mutatione vestimentorum,	1318	mutatione *vestium*
quo casu Homicidium *dicitur commissum* ex Insidiis.	1320	homicidium ex insidiis

505—B., xxxii or 26:

ut commodius, et tutius de illa	1325	de illa ut vindictam sumeret
vindictam sumeret	1327	commodius * * * et tutius

506—B., lxvi or 54:

Francisca erat	1339	our wife reposed
sub potestate Iudicis	1340	sub potestate judicis

507—B., lxxviii or 66:

accedit ad	1380	accedit ad
exasperandam pœnam	1381	*exasperationem criminis*

508—B., cxxxix or 114:

et cum agatur de pauperibus,	1531	et cum agatur de pauperibus
carceratis,	1532	carceratis
in eorum causis	1533	in eorum causis
pietas	1534	pietas
triumphare debet, quia ipsi sunt	1535	triumphare debet, quia ipsi sunt
thesaurus Christi	1537	thesaurus Christi

509—B., xxxvii or 29:

ista sua opinio *est*	1558	opinio
multum Cordi tenenda	1559	multum tenenda cordi

510—B., xli or 33:

non dicuntur	1562	non dicuntur
Mandatarii,	1563	mandatorii
sed Auxiliatores	1564	sed auxiliatores

511—B., xliv or 34:

adeo honoris causa est efficax, *ut*	1566	adeo honoris causa est efficax
non solum	1567	non solum
se diffundat	1568	se diffundat
in Mandatarios simplices,	1570	in mandatorios simplices
sed etiam *in Mandatarios* qualificatos	1572	sed etiam assassinii qualitate
Assassinii qualitate	1573	qualificatos

512—B., clxxxii or 150:

quo nihil absurdius	1633	quo nihil absurdius
excogitari potest	1634	excogitari potest

513—

The long peroration, over which the Arcangeli of the Poem is laboring (RB., VIII, 1637-1736), is taken bodily from B., cxxii or 103, where it is the peroration of the last and most important of the arguments of the real Arcangeli.

Caeterum	1635	cæterum
enixe supplico,	1637	enixe supplico
ut illustrissimo Domino meo	1639	ut *dominis meis*
benigna fronte,	1640	benigna fronte
ac serenis oculis	1641	*et* oculis serenis
perpendere placeat,	1642	perpendere placeat
quod Dominus Guido	1643	quod dominus Guido
occidit,	1644	occidit
ut eius Honor tumulatus	1645	ut ejus honor tumulatus
in infamia	1647	in infamia
resurgeret.	1648	resurgeret
Occidit Uxorem,	1649	Occidit uxorem
quia illi fuit	1650	quia illi fuit
opprobrio,	1651	opprobrio
et *illius* Genitores	1652	et genitores
qui postposita *omni* verecundia	1653	qui postposita verecundia
filiam repudiarunt,	1655	filiam repudiarunt
et declarare non	1656	*atque* declarare non
erubuerunt	1657	erubuerunt
esse Meretricis	1658	meretricis genitam
genitam,	1659	esse
ut ipse dehonestaretur	1660	ut ipse dehonestaretur
cuius mentem	1662	cujus mentem
perverterunt,	1663	perverterunt
et ad illicitos Amores non	1664	et ad illicitos amores non
pellexerunt dumtaxat	1665	dumtaxat pellexerunt
sed vi obedientiæ	1667	sed vi obedientiæ
filialis	1668	filialis
cogerunt	1669	*coegerunt*
Occidit.	1670	Occidit
ne scilicet amplius in dedecore	1671	ne scilicet amplius in dedecore
viveret	1673	viveret
Consanguineis invisus,	1674	invisus consanguineis
a Nobilibus	1675	a nobilibus
notatus,	1676	notatus
relictus ab Amicis,	1677	relictus ab amicis
ab omnibus derisus.	1678	ab omnibus derisus
Occidit	1680	occidit

in urbe	1681	in Urbe
nempe, quæ alias fuit spectata	1682	nempe quæ alias spectata *est*
Nobilem Matronam	1684	matronam nobilem
abluere maculas Pudicitiæ	1685	abluere pudicitiæ maculas
proprio sanguine,	1687	sanguine proprio

quas ipsa invita, et reluctante filius Regis impegit, morte propria alterius culpam. et violentiam expiando Valer. Maxim., lib. 6, *cap.* 1, *num.* 1. *Tit. Liv., lib.* 1, *Histor.*

Et quae vidit	1688	quæ vidit
Patrem undequaque	1689	patrem undequaque
impunem,	1690	impunem
et non illaudatum	1691	et non illaudatum
se polluentem Parricidio	1692	*sed* polluentem parricidio
filiæ,	1693	filiæ
ne raperetur ad stupra	1695	ne raperetur ad stupra

Valer. Maxim., ubi supra, num. 2. *Tit. Liv. lib.* 3. *Histor.*

tanti illi cordi fuit	1696	tanti illi cordi fuit
amittendi Honoris	1697	suspicio
suspicio,	1698	honoris amittendi
ut potius voluerit orbari	1699	ut potius voluerit filia
filia,	1700	orbari
quam illa incederet	1701	quam illa incederet
inhonesta,	1702	inhonesta
licet non sponte.	1703	licet non sponte
Occidit	1704	Occidit
in propria Domo,	1705	in propria domo
ut Adultera, eiusque Parentes	1706	ut adultera *et* parentes
conscii agnoscerent	1707	conscii agnoscerent
nullum locum, nullumque	1708	nullum locum, nullumque esse
asylum	1709	asylum
esse *tutum*, *et* impenetrabilem	1710	impenetrabilem
Honori læso,	1711	honori læso
neve ibi	1712	neve ibi opprobria
continuarentur opprobria,	1713	continuarentur
et Domus quæ turpium Testis fuit,	1716	et domus quae testis fuit turpium
esset et pœnæ.	1719	esset et pœnæ
Occidit,	1719	Occidit
quia alio modo	1720	quia alio modo
non poterat eius æxistimatio	1721	non poterat ejus existimatio
læsa tam enormiter	1723	læsa tam enormiter
ducere cicatrices.	1724	ducere cicatrices
Occidit ut exemplum præberet	1725	Occidit ut exemplum præberet
Uxoribus	1725	uxoribus
Sacra Iura Coniugii *religiose*	1725	jura conjugii
esse servanda.	1728	esse servanda
Occidit denique,	1729	Occidi denique
ut pro posse honestus viveret,	1730	ut pro posse honestus viveret
sin minus	1732	sin minus
proprii Honoris	1733	proprii honoris
offensi	1734	offensi
commiseranda victima caderet.	1735	commiseranda victima caderet

514—

The remaining Latin of Book VIII is adapted with free modification as follows:

131 tædas jugales iniit, subiit, from Catullus 64. 302: tædas jugales celebrare
133 connubio stabili sibi junxit. Ver., A. I, 73.
898–900 Crudum Priamum, Priamique pisinnos.

Found as a scholium to Persius I, 4. The scholium reads as follows: *Labeo transtulit Iliadem verbum ex verbo ridicule satis. Eiusque est ille versus: crudum manduces Priamum, Priamique pisinnos.* (Iliad IV, 3.) That is: "Labeo translated the Iliad and Odyssey literally, but ridiculously enough. This verse is his, 'you may chew up Priam and his kids too.'" Possibly this scholium fell under the Poet's attention when he turned to his Persius to verify the quotation from Persius, Fourth Satire, lines 50-1, which are found at B., 170.

1182 Furor ministrat arma. Ver., A. I, 150, quoted also B., 124.
1183–4 Unde mi lapidem, unde sagittas. Hor. Sat. II, VII, 116.
1200 plus non vitiat. A medieval philosophic term
1248 objectum funditus corruit. A medieval term in logic
1519 haud passibus æquis. Probably suggested by Ver., A. I, 724, non passibus æquis
1805–7 ne sit marita quæ rotundioribus onusta mammis—baccis ambulet. Hor. Epodes 8, 113.

515—

The book-Latin of Bottini's monologue is far more scant than that of the preceding one, but classical quotations are very common. As this latter feature is of rare occurrence in Browning's works, it must have been employed with dramatic significance here, to bring out the Fisc's pride in his Latinity.

B., ix or 10:		RB., IX:
cohibita fuit	249	cohibita fuit
liberiorem vitam ducere	250	vitam liberiorem ducere

516—B., clxxvii or 146:

quod dato licito fine	523	*quia* dato licito fine
damnanda non sunt media	524	ad illum assequendum ordinata
ad illum assequendum ordinata	525	non sunt damnanda media

Cf. RB., VIII, 1180, 1322, 1482.

517—B., cii or 85:

nimis incongrue	982	nimis incongrue

518—B., clxxxii or 150:

ego teneo contrariam sententiam	983	sententiam ego teneo contrariam

519—B., clxvii or 138:

subsistit	1532	subsistit
responsio tradita	1533	responsio tradita
quod non sit attendendus Titulus	1534	quod non sit attendendus Titulus
sed probatio	1535	sed probatio
ex Processu resultans	1536	resultans ex processu
et pœna per sententiam imposita	1538	et pœna per sententiam imposita

520—

The following passages are quoted or adapted by the Fisc from classic sources:

145–7 lene tormentum ingenio admoves, plerumque duro. Hor., Odes, III, 21, 13.
240–1 Discedunt nunc amores, maneat amor. Unidentified.
284–6 novorum nascitur ordo. Ver., Ecl. IV, 5.
340 constans in levitate. Ovid, Trist. V, 8, 18.
347–8 Crede non illum tibi de scelesta plebe delectum. Hor., Ode II, 4, 17.
368 heu prisca fides. Ver., A. VI, 878.
405 insanit homo (aut versus facit). Hor., Sat. II. 7, 117.
465 negatas artifex sequi voces. Persius, Prol. 11.
681 sororia saltem oscula. Ovid, Met. 4, 334; 9, 537.
747–8 ut vidii, ut perii. Ver., Ecl. VIII, 41.
1000 qui *haud* cunctando rem restituit. Ennius, quoted by Cicero, de Senec. IV, 10. "haud" is inserted by the Poet.
1018 Quid vetat. Hor., S. I, 10, 56.
1227 redeunt Saturnia regna. Ver., Ecl. IV, 6.
1242 infelix lolium, carduus horridus. Ver., Ecl. V, 37-9.
1299 forsan et hæc olim. Ver., A. I, 203.
1325 filius est quem nuptiæ demonstrant. Unidentified.
1333–5 Cujum pecus? An Melibœi? Non sed Ægonis! Ver., Ecl. III, 1–2.
1362–6 Cur ego desperem fieri sine conjuge mater, et patere intacto dummodo casta viro? Ovid, Fasti V, 241-2.
1376–7, 80–1 Incipe, parve puer, risu cognoscere patrem,
Nec anceps hære, pater, puero cognoscendo.
Ver., Ecl. IV, 60.
1506 solvuntur tabulæ (solventur). Hor., Sat. II. 1, 86.
1564 tenax proposito. Hor., Ode III, 3, 1.

521—RB., IX, 214-5:

Sermocinando ne declamem ultra clepsydram. Medieval clerical saying.

522—

646 suis expensis nemo militat.
782–3 non idem semper dicere, sed spectare debemus.
(Proverbial sayings.)

523—B., ccxlviii or 196:

Incidit in Scillam cupiens evitare Charybdim,

An adaptation of line 301, of Book V, of the Alexandreis of Philippe Gaultier, a French Latin poet, 1513. The verse is founded on a Greek proverb derived from the Odyssey.

524—

There were evidently two stages of the trial of Guido and his fellow-assassins, as B., 192, speaks of "both presentations of the case," and B., 195, speaks of "the second setting forth of the case." The second stage of the trial was more learnedly and more skilfully fought, and the arguments are longer and more acute. They are based in part on the additional evidence secured by means of the torture of the vigil, and the Advocate of the Poor begins this part of the case with a sharp attack on the legality of the torture which had been decreed. Pamphlets 1-7 and 14 belong to the first stage of the trial. This is clearly proved, even in the case of pamphlet 14 (which was put in wrong order) by the references in the later pamphlets to paragraphs, or points of law, included in the earlier ones. Thus pamphlet 8 includes reference to pamphlet 14. Pamphlet 9 refers to pamphlet 8, while pamphlet 13 refers to pamphlet 9. In this way the order of the pamphlets in the trial is established as follows:

First stage: 1, 2, 3, 4, 5, 6, 7, 14.
Second stage: 8, 9, 11, 12, 13, 16.

Pamphlet 10, the first anonymous Italian narrative, is referred to by No. 13, and probably had just preceded it. All of these arguments must have been rapidly prepared, as they extend over only a month of time. In several places the lawyers speak of being pressed by the scantiness of time, and Gambi, in No. 12, speaks of having had but three hours to prepare.

525—RB., V, 12-3:

Noblemen were exempt, the vulgar thought,
From racking;

This point was made by Spreti and denied by Bottini (B., 166). Cf. RB., IV, 1625-8; VIII, 316-23.

526—RB., I, 979-80:

His limbs' late taste of what was called the Cord,
Or Vigil-torture more facetiously.

The torture of the vigil, which is used with such striking effect by the Poet in giving setting to the monologue of Guido Franceschini, was evidently not inflicted at the very beginning of the case, as the Poet imagines, but between the two stages of the legal argument (Note 524). For in the first stage there is continual argument concerning this torture as not yet having been inflicted, while in the second stage it is evident that the torture has been inflicted, and confession has followed, and the lawyers are merely accusing and defending the action of the court in permitting such painful torture.

It seems that the prosecution, being dissatisfied with the first confession under milder torture, in which Guido claimed he had given orders, not for death, but merely for mutilation (B., 20), had demanded the torture of the vigil to gain the whole truth. Spreti and Arcangeli (B., 28, 35) oppose this, and are refuted in turn by Gambi and Bottini (B., 52, 166). Evidently the court decreed the torture, and secured far more of a confession, and part of this is probably what is given in pamphlet 9, though the confessions as a whole have been lost. The further fact that the assassins were still further planning to murder Guido in turn (Note 338) was probably revealed in this way. Spreti at the beginning of his next argument, No. 9, sharply attacks the legality of the decree of torture (B., 105) and tries to have the evidence thus secured thrown out of the case. Bottini in turn (B., 135 *et seq.*) refutes him at length, and on the confession demands the infliction of the death penalty without further delay (B., 157).

The nature of this torment and its specific effect on Guido is not described in the Book, though the Pamphlet speaks of Baldeschi fainting under the cord (Note 390). It is merely referred to in such general terms as "the rigorous torment of the vigil." The Casanatense pamphlet (p. 223) gives a fuller and better account of the examination under threat of torture. To gain more definite knowledge on this point, Browning evidently traced the reference given at B., 28, to Farinacci, qu. 38, nu. 71, and had there found the full information he wanted. We have undoubted proof that he made such reference, for in lines 428-43 of Book VIII of the Poem he paraphrases Farinacci's text closely, as may be seen in Notes 386-9. Agostinelli seems to have been excepted from this torture (B., 114), *non fuerit denuo constitutus* (Note 315).

I quote the full text of Farinacci: (Prosperi Farinacii iurisconsulti romani, Praxis et Theorica criminalis Lugduni Horatius Cardon, 1606, Pt. I, Tome II, p. 201.)

The fifth and last among us is the *tormentum vigiliae.* At the time of Marsilius, who claims to be the inventor of this torment, the accused was placed upon a bench and made to sit there, and two men were present to watch lest he should fall asleep, and if he wished to sleep they aroused him and for forty hours would not permit him either to sleep or to rest. Finally, when he was promised rest within such a time, he was compelled to confess. Marsilius says of this torment that although it may seem ridiculous, no one is found so strong of spirit as to resist it, and this is elsewhere testified as being true. But in this evil day of ours, by some fate unknown to me, whether because of the severity of judges or the obstinacy of criminals, this torment has taken on a harsher and more cruel manner. For such a bench, which some call the Goat and others the Horse, is raised from the earth as high as a man's stature, and its top is not level, but is a little higher in the middle. * * * On the top of this bench the accused is placed, naked and bound to prevent him from falling, and with his hands bound behind his back and fastened by a rope that is on top of the bench, not otherwise than if he were to be tortured. And what is worse, his arms are held extended by the same rope, either entirely or in part, as the judge sees best. There the luckless accused * * * is detained for five or ten hours, and sometimes even longer at the Judge's discretion. And this is at the same time the torture both of the "cord" (*funis*) and of the vigil. What is more pitiable, out of a hundred men who have suffered this torment, I believe that not more than four or five have been martyrs, the rest indeed were confessors (*martyres, confessores*) for the torment is insupportable both by reason of the time and of the fearful pain and suffering. It is

quite true that I have seen it used only in the case of very atrocious crimes, such as the crime of *læsa majestas*, murder in the open streets, highway robbery, infamous nudity, and such crimes under bann. Therefore, in inflicting such torment, judges should see that it be much tempered, and above all they should see that the arms of the accused be not much extended. For such extension for a long time is in itself perilous, and many have died in this very torment on account of it, and very many more have fainted.

527—RB., X, 3 and 6:

and read a History.
* * * * * * *
Of all my predecessors, Popes in Rome:

Browning's method of creative art as seen in his use of the "old yellow book" leads me to a feeling that lines 32-150 of Book X are a free paraphrase of some actual history of the Papacy, which had fallen into the hands of the Poet. But I have not been able to find any such original for the passage as a whole. The facts given in these lines are such as are found in one or another of the historians, and in some cases even the form of expression is similar. Some extracts are given below with the line references to the corresponding lines of *The Ring and the Book.*

Luitprand, *Historia Gestorum Regum et Imperatorum sive Antopadosis*

No. 30. Concerning Pope Sergius who ordered them to drag Formosus from his tomb, and to depose him after he was dead.

When he [Sergius, a mistake for Stephen] had been established Pope, as one impious and ignorant of divine teaching, he commanded that Formosus be dragged from his tomb, and that he be placed in the Papal throne, clothed in his priestly robes (42-43). And to him he said: "Why when thou wert Bishop of Porto (46), moved by a spirit of ambition, usurpdst thou the universal throne of Rome?" (47). When these matters had been carried through, he commanded that the body be stripped of its sacred robes (81), that three fingers be cut off (84-5), and that it be cast into the Tiber (87-88). And all whom Formosus ordained, he reduced to their own rank (74-5), and reordained them.

No. 31. Concerning the body of Formosus, which was cast into the river by Sergius, and then found by fishermen, and saluted by the images of the saints.

But of what authority and of what religious life Formosus had been, we can gather from this: for when he was afterwards found by fishermen (112) and carried back to the church of St. Peter, the chief of the Apostles (120-1), certain images of the saints reverently saluted him when set in his place (124-6). For I have very often heard this from the most religious men in the city of Rome (122-3).

Fleury in his *Histoire Ecclestastique*, Book 54, p. 579, gives the following account:

Pope Stephen the Sixth [sic] held then a council (33) in which he condemned Formosus, his predecessor. He had his body disinterred. Then they brought it into the midst of the assembly (38) and placed it on the papal throne (44), reinvested with his robes of office (43), and gave him an advocate to respond in his name (50-2). Then Stephen, speaking to the body as if it were still alive: "Oh, Bishop of Porto (46), tell me why thou hast carried thine ambition even to usurping the seat of Rome?" (47). Having condemned him (67-9), they despoiled him of his sacred robes (81), cut off his three fingers (84-5), and finally his head (86), and then cast him into the Tiber (88). Pope Stephen deposed all those whom Formosus had ordained (74-5), and ordained them anew.

p. 609. Theodore, who died only twenty days after his ordination (108), in that time left no stone unturned to achieve as far as possible the reunification of the Church. He called back the Bishops who had been driven from their sees, and reestablished the clerics ordained by Formosus and deposed by Stephen, and restored them to their sacred honors and the exercise of their functions. He caused them to carry back with due solemnity the body of Formosus into the burial place of the Popes (119-21); for it had been found by fishermen (112). And as they were bearing it in, many persons then present (122-3) assure us that the images of the saints saluted him in passing (125-6).

Sergius declared against Formosus and approved the procedure of Stephen VI (142-3); whose body [note it is Stephen's body] he had transferred ten years after his death and placed over him an honorable epitaph.

Flodoardus tells the matter as follows:

Then Stephen, the sixth [sic] on the sacred throne, who impresses us as harsh, but impressed his own contemporaries more harshly, who did cruel things to the living, but acted even more brutally toward the dead, and who attacked Falco with threats and Formosus with very deeds, assembled an unfortunate council, over which he presided harshly (34).

Platina's *Lives of the Popes*. Translated by Benham.

Stephen the VII [sic] * * * persecuted the memory of Formosus with such spite, that he abrogated his decrees, and rescinded all he had done. * * * Martin the historian says he hated him to that degree, that in a council which he held (33), he ordered the body of Formosus to be dragged out of the grave, to be stripped of his pontifical habit (81) and put into that of a layman, and then to be buried among secular persons, having first cut off those two fingers of his right hand, which are principally used by priests in consecration (85), and threw them into the Tiber. * * * Theodorus restored the decrees of Formosus and preferred his friends. * * * Theodorus in the twentieth (108) day of his Papacy died. * * * John removed to Ravenna (132), where, calling a synod of seventy-four bishops (133), he condemned all that Stephen had done (135) and restored the decrees of Formosus, declaring it irregularly done of Stephen to reordain those on whom Formosus had conferred holy orders.

Biographie universelle, XIII, 138.

Stephen VI had had for his predecessor Formosus, whose memory he wished to dishonor with such an excess of zeal as to betray both ignorance and ferocity (34). Formosus had been Bishop of Porto, and was called as Bishop of Rome: this translation from one see to another might still seem a criminal innovation. * * * Stephen called a council to have Formosus condemned. He had his body disinterred and brought into the assembly (38-9) They placed him upon the pontifical chair (44), reclothed in his robes of office (43) and gave him an advocate to respond in his name (52) Then Stephen, speaking to the dead body as if it were alive: "Why, oh Bishop of Porto, (46) hast thou carried thine ambition to the point of usurping the throne of Rome?" After he had been condemned, they despoiled him of his sacred robes (81) cut off three fingers, and then his head (85-6), and then cast it into the Tiber (88). This is the account of Luitprand (122) adopted by Fleury. Platina assures us that he cut off the two fingers which serve in consecration (85), which seems more probable.

528—RB., III, 96-7:

That doctrine of the Philosophic Sin:
Molinos' sect

B., 120, speaks of the "Doctrine of Molinos and the philosophic sin, which has been checked by the authority of the Holy Office." The historical and philosophical meaning of this reference may be found elsewhere. Browning has stated its significance in the world he is picturing (RB., I, 307-14):

* * * the sect for a quarter of an hour
I' the teeth of the world which, clown-like, loves to chew
* * * * * * *
Aught it may sport with, spoil, and then spit forth

Cf. RB., II, 126, 175-7; III, 34, 109, 989; V, 203, 223, 870, 1043, 1238, 1838; VI, 152, 473; VII, 769; VIII, 697, 1074, 1337; IX, 33, 566, 727, 1048, 1499; X, 1869, 2067; XI, 643, 2041; XII, 654.

529—RB., VII, 22-3:

the marble lion * * *
With half his body rushing from the wall,

This strange old sculpture, the "*bestia,*" is familiar to the visitors at San Lorenzo in Lucina.

530—RB., VI, 462:

Those lancet-windows' jewelled miracle,—

Murray's Northern Italy: "The tall lancet windows of the Tribune (in the Duomo) have been compared and even preferred to the Five Sisters of York Minster."

531—RB., VII, 1215-8:

> And Michael's pair of wings will * * *
> * * * bear him from our picture where he fights
> Satan,

Crowe & Cavalcaselle's *History of Painting in Italy*, Vol. I, p. 256: "In the bell room (of San Francesco of Arezzo), Spinello depicted scenes from the legend of the archangel Michael. * * * The archangel, poised on the dragon, is seen in the act of striking him, whilst on each side angels and demons struggle for mastery."

532—

Several matters of evidence, which are not included in the Summaries, are cited by folio in the arguments of the lawyers. This includes the testimony of the defendants themselves (B., 97, 107-8) of Maria Margherita (B., 88, 93) and several letters (B., 57-8, 90). Cf. also 94.

533—

"Luogo di monte": The name given to certain investments of Pietro Franceschini; it is thus defined in the *Vocabolario Universale Italiano:*

> *Credito di somma determinata in un monte.*
> *Monte, luogo pubblico dove si pigliano, o si pongono danari a interesse*

534—

"Praejudicium tertii" (B., 55, 109, 137), the injury of the third party (some person outside the suit). That is, no judgment can be given condemnatory of, or injurious to, a person who is no party to the suit at bar.

> *Pregiudizio, e nocumento che procede da giudizio anticipato*, e non amico, etc.
> *significare ogni altro danno * * * dannegiato dalle false opinioni degli huomini.*
> Tommaseo, *Dizionario dei Sinonimi.*

535—

B., xi: *Visus et alloquium, tactus, post oscula, factum.* This seems to be an old proverbial saying. It is used by Porphyrion in a scholium to Horace, Carmina I, 13, 16:

> eleganter, quia in quinque partes amoris fructus esse partitur dicitur: visu, alloquio, tactu, osculo, concubito.

536—

In pursuance of the inquiry followed up in Note 527, I wrote to Mr. Robert Barrett Browning, and he sent me the following reply, which I quote with his consent because of certain matters of interest:

> La Torre all' Antella, Florence, January 6, 1904.
>
> My dear Sir:
>
> I wish I were able to give you the information you ask me for, but my father's books are in Venice and I have not any here touching on the matter to refer to.
>
> If Pope Stephen was, as you say, the Sixth and not the Seventh, of course the mistake is obvious and perhaps attributable to an unconscious slip of the memory, which with my father was not at its best in dates and figures. It is not likely that such an error should have appeared in any old work, such as he would have consulted; and certainly it was not caused by carelessness, for he was painstaking to a degree and had a proper horror of blundering, which is the word he would have used. I can only account for such a mistake as this—which he would have been the first to pronounce unpardonable—by his absent-mindedness, his attention being at the moment absorbed by something else. Absent-mindedness was one of his characteristics, over instances of which he used to laugh most heartily. My father's intention, I know, was to be scrupulously accurate about the facts in this poem. I may tell you as an instance that, wishing to be sure that there was moonlight on a particular night, for descriptive purposes, he got a distinguished mathematician to make the necessary calculation. [Note 185.] The description of the finding of the Book is without doubt true in every detail. Indeed, to this day, the market at S. Lorenzo is very much what it was then and as I can remember it. Not long ago, I myself bought an old volume there off a barrow.
>
> The "yellow book" was probably picked up in June of 1860, before going to Rome for the winter—the last my father passed in Italy. As it had always been understood that the Book should be presented to Balliol, I went soon after my father's death to stay a few days with Jowett, and gave it to him.
>
> In the portrait which hangs in Balliol hall I painted my father as he sat to me with the Book in his hands.
>
> Nothing would have gratified him more than what you tell me about the interest with which his works are studied in America, and I need not say how much pleasure this gives me.
>
> Believe me with many thanks for your kind letter,
> Yours very sincerely,
> R. BARRETT BROWNING.
>
> To Mr. Charles W. Hodell.

537—RB., VIII, 404-12:

> I wonder, all the same,
> Not so much at those peasants' lack of heart;
> But—Guido Francischini, nobleman,
> Bear pain no better!

No such word concerning Guido's quailing at torture was found in Browning's sources, but that his imagination divined truly is proved by the Casanatense pamphlet (p. 223): "Far less torment than would seem to be necessary had to be applied to get the confession of the murderers and of Guido, who more than the rest had stood by his denial. But at the sight of torment he had not the heart to resist longer, and confessed fully."

538—

The motto from Pindar, Olymp. I, 112, which is found on the flyleaf of the Book just below the Poet's signature, was evidently chosen by the Poet when the subject had taken fast hold of him, and he began to see his great masterpiece. He evidently recognizes this as the opportunity of his life as an artist.

The passage occurs near the close of the song in honor of Hieron as victor in the chariot race in Syracuse, B. C. 472. The passage, as translated by Myer, runs as follows:

> My part is to crown Hieron with an equestrian strain in Aeolian mood. * * * A God hath guard over thy hopes, O Hieron, and taketh care for them with a peculiar care, and if he fail thee not, I trust that I shall again proclaim in song a sweeter glory yet, and find thereto in words a ready way, when to the fair-shining hill of Kronos I am come. *Her strongest-winged dart my Muse hath yet in store*

Mr. Barrett Browning, in reply to this interpretation of the motto, has said: "I know he thought *The Ring and the Book* was going to be his greatest work, long before he had finished it; and he may have seen here—as you say—the great opportunity of his poetic career. This was probably when he began the poem, which he often told me while writing would be the longest in the English language. He was more and more interested in the work as it advanced."

539—RB., I, 1-31:

> Do you see this Ring?
> 'Tis Rome-work, made to match
> (By Castellani's imitative craft)
> Etrurian circlets * * *
> * * * * * * *
> * * * 'Tis a figure, a symbol, say.

Mr. R. Barrett Browning has written as follows: "The ring was a ring of Etruscan shape made by Castellani, which my mother wore. On

it are the letters A E I. Ever after her death my father wore it on his watch chain." A friend of the poet has also stated that during his last illness the poet kissed the ring with all affection before composing himself for his night's rest. As he thinks of his Lyric Love he compares this ring with

> Thy rare gold ring of verse (the poet praised)
> Linking our England to his Italy!
>
> RB., XII, 873-4.

Such is the figure employed by the Italian poet Tommasei in the inscription for the tablet which the municipality of Florence placed on Casa Guidi in honor of the poetess they had come to revere.

540—

It has seemed well to give a transcript of the second and third letters [pp. ccxxxvii-xl] as the handwriting is difficult to read.

Molt' Ille e Mto Onle Sigr mio Pr. Oss.

(In full = Molto Illustre e Molto Onorevole Signor mio Padrone Osservantissimo.)

Le giustificazioni mandate non sono giunte in tempo perchè hoggi finalmte doppo tanti contrasti è stata eseguita la giustizia del pouero Sr Guido con farli la testa, e i quattro sicari sono stati impiccati. La causa fù risoluta Martedì, mà perche s'era dedotto il chiericato, e per questo si pretendeua che quanto a lui non ui entrassi la uita doppo che s'era spedita staffetta in Arezzo per hauerne le giustificazioni il Papa passò ieri il chirografo, e ha uoluto che oggi onninamte si eseguisca. Già che è stata volontà di Dio, che egli paghi simil pena almeno con le scritture fatte se n' è ricavato che morì da galant' huomo, perchè oltre l' essere morto con coraggio e esemplarità è stato compassionato da ogni galant' huomo, e non hà perduto niente la casa sua in materia della reputazione. Vi è concorsa tutta Roma come puol credere, e non ui è stato riparo con tutto che si sia scritto forte, e non li sieno mancate raccomandazioni di gran conseguenza, perche il Sigre Ambasciatore dell' Imperatore ne parlò di proposito Martedi, conforme egli mi disse ierl' altro, e poi le cose sono precipitate in un subito.

Hò terminata la sua scrittura per la Congne del Concilio, e ogni volta che Monsigre Segretario uogli portarla penso che siamo all' ordine. Io la prego à fauorirmi di quelle copie del processo più presto che sia possibile, e quando il Can. Filippo non ne lasci l' adito fauorisca auuisarmelo perchè io possa pensare à altri passi uolendo una uolta uscire di questo imbroglio se possibile sarà e per fine resto con riuerirla.

D. V. S. Molt' Illre e Molt' Onle

Roma 22 Febbo 1698.

Divo e oblo Sre

Gasparo del Torto.

[The letter is addressed:]

Al Molto Illmo e Mo Ecco Sigre Mio Pronc Colmo

il Sigre Francisco Cencini

Firenze

541—Letter III:

Molto Illre et Eccmo Sigre Sigre mio Pr. Colmo

Martedi si propose la disgratiatissa ca'a e la Congne del Gouerno risoluè—Dilata et ad mentem—La mente era che si aspettassero le giustificazioni del Chiericato consaputo. Sù questa fauoreuole resoluzne pigliarono fiato li Defensori e cominciarono à respirare i buoni Amici, quando mio Sigre l'altra sera alle due di Notte motu proprio sottoscrisse il chirografo derogatis al Chiericato quatis si adducesse e alla minorità di vno delli Correi. Sottoscritto il Chirografo, si propalò per la Città tal nuoua, e con essa la certezza della Giustitia che è seguita hoggi doppo il pranzo dei cinque, cioè del pouero Sig. Guido con il taglio della Testa, e degl' altri quattro Correi con la forca. Non significo à V. S. Eccma il mio dolore, poiche di q: ne potrà essere lei med. veridico testimonio.

Le giustificazioni sarebbero state di rileuanza grandissa mà non nel caso p. perchè mio Sre hà voluto cosi.

Accludo la posizne del Fisco, mancandogli solo una risposta che inviarò subito che mi sarà capitata acciò V. S. Eccma habbia l'intiera positione.

Hora che il Sig. Auuoco del Torto è sbrigato dagl' interessi p. potrebbe seruire V. S. Eccma si nella Caa Matrimoniale si nell' altra del Gomez onde mi rimetto à tutto qllo che V. S. Eccma li scriuarà, pregandola sempre piu d' incessanti comandi acciò perpetuamne possa essere

Roma li 22. febo 1698.

Ser. Oss. e Ule

Di V. S. Eccma

Carlo Anto Vgolinucci

ADDITIONAL NOTES.

Sir Frederick Treves, in "The Country of The Ring and the Book," has followed the story of this tragedy with extensive topographical and geographical detail and illustration. He has gone to far more pains than did the poet in familiarizing himself with the scenes of the drama —Arezzo, Castelnuovo, Rome. I wish to amend my work, by his suggestion, in the following particulars:

Note 85. The real date of Pompilia's marriage to Count Guido was Sept. 6 (see marriage record given in full on p. 299 of Treves's work). Then, as the banns were regularly announced three times, there could have been no secrecy about the marriage.

Notes 69 and 292. Treves is right in stating (p. 97) that Via Vittoria and Strada Paolina are one and the same street.

Note 189. The topographical difficulties at the Torrione as explained by Treves (pp. 168-9) make the story of the escape clearer.

Note 64. The exact ages of Pietro and Violante are fixed by the death records (p. 300) as 69 and 66 respectively.

Page 178 records each posting house and the intervening mileage on the 138 miles of the flight from Arezzo to Castelnuovo.

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ADDENDA.

Record of the Definite Order of Events in the Case.

July 17, 1680. Pompilia born.
September 6, 1693. Pompilia married to Guido Franceschini.
December 1693. The Comparini accompany the bride to Arezzo.
Four months residence together in Arezzo.
Domestic broils in Arezzo, January and February 1694.
March 1694. The Comparini return to Rome.
April or May 1694. Violante reveals base parentage of Pompilia.
June 14, 1694. Pompilia's letter to Abate Paolo.
June 24, 1694. Affidavit of Angelica.
Summer of 1694. Pietro Comparini prosecutes suit to recover dowry.
August 2, 1694. Letter of the Governor to Abate Paolo.
September 15, 1694. Letter of the Bishop of Arezzo to Abate Paolo.
March 1697. Pompilia seeks aid of Confessor Romano.
April 1697. Seeks aid of Guillichini, Conti, and Caponsacchi.
April 29 (1 a. m.). Pompilia flees.
April 30 (in the evening). Fugitives arrive at Castelnuovo.
May 1 (early in the morning). Guido overtakes fugitives and has them arrested.
May 3. Pompilia writes from the prison of Castelnuovo.
May 13. Pompilia makes her deposition.
May 21. Pompilia is further cross-examined.
June 17, 1697. Certain persons in Arezzo make affidavit in Pompilia's behalf.
Summer of 1697. The Process of Flight.
September 24, 1697. Caponsacchi sentenced to relegation.
October 12. Pompilia permitted to return home under bond.
Fall of 1697. Pompilia institutes suit for divorce.
Fall of 1697. The Franceschini push a criminal suit against Pompilia in the courts of Arezzo.
Fall of 1697. Abate Paolo loses his secretaryship of the Order of St. John.
December 18, 1697. Pompilia gives birth to a son.
December 24, 1697. Guido and his cutthroats arrive in Rome.
January 2, 1698. Guido murders his wife and the Comparini.
January 3. Guido and his associates arrested and imprisoned.
January 6. Pompilia dies.
January 19. Fra Celestino makes affidavit.
January 1698. The murder trial begins.
January 1698. Conti dies in Arezzo.
January 1698. Sta. Maria Maddalena delle Convertite institutes suit to gain Pompilia's estate.
End of January. The torture of the Vigil.
February 1698. The second stage of the murder trial.
February 9. Certificate of the baptismal record of Pompilia obtained.
February 15. Certificate of the Tuscan criminal prosecution of Pompilia obtained.
February 18. Guido declared guilty, but a stay of sentence granted.
February 21. Execution set for following day. The Pope overrules delay.
February 22, 1698. The murderers are executed.
Spring of 1698. The Franceschini bring suit to recover Pompilia's property.
May 17. The criminal court decides in favour of Pompilia's executor.
September 1-9, 1698. Final decree of court, utterly clearing Pompilia's reputation.

Browning uses all the above chronology with scrupulous accuracy, save when, for good artistic reasons, he changes the flight from April 29 to the 23d, St. George's day.

Personal Names found in the Book and Pamphlet and used by Browning in "The Ring and the Book."

Franceschini, Signor Guido.
Franceschini, Abate Paolo.
Franceschini, Canon Girolamo, *b.* August 5, 1654, brother of Guido.
Franceschini, Donna Beatrice, 1631-1701, mother of Guido.
Franceschini, Count Tommaso, father of Guido.
Comparini, Signor Pietro, father of Pompilia.
Comparini Violante, mother of Pompilia.
Comparini, Pompilia.
Canon Conti.
Canon Giuseppe Caponsacchi.
Signor Guillichini, helper in the flight.
Borsi, the driver.
Signor Marzi-Medici, Governor of Arezzo.
Bishop of Arezzo, Giovanni Matteo Marchetti, 1691-1704.
The Confessor Romano.
Maria Margherita Contenti, servant in the Franceschini home.
Monna Baldi (Albergotti).
Cardinal Panciatichi, Cardinal Acciajuoli } Guido's confessors on the eve of execution.
Signor Tighetti, trustee of Pompilia's estate.
The babe, Gaetano.
Fra Celestino, confessor of the dying Pompilia.
Signor Giacinto Arcangeli.
Signor Bottini.
Signor Spreti.
Signor Cencini, a Florentine lawyer interested in the murder trials.
Alessandro Baldeschi, Domenico Gambassini, Francesco Pasquini, Biagio Agostinelli } The assassins.
Curate Ottoboni, Curate at San Lorenzo, in Lucina.
Judge Tommati, Auditor Curiae.
Judge Molines, of the Ruota.
Marco Antonio Venturini, Vice-Governor, presiding in the murder case.

ANDERSON, INDIAN